

2716

No. 13133

United States
Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. T. GRANT COMPANY, a Corporation,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

JAN - 9 1952

~~PAUL P. O'BRIEN~~

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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JAMES P. McLOUGHLIN, and

VICTOR LAZZARO,

84 S. First Street,

San Jose, California,

Appearing for Local 428, AFL.

Form NLRB-501

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 20-CA-378.

Date Filed: 5/2/50.

Compliance Status Checked by: 11/15/50 E.S.

1. Employer Against Whom Charge Is Brought:

Name of Employer: W. T. Grant & Co.

Address of Establishment: 146 South First
St., San Jose, Calif.

Number of Workers Employed: 25.

Nature of Employer's Business: Retail Variety Store.

The above-named employer has engaged and is engaging in unfair labor practices within the mean-

ing of section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

(a) That said employer by its officers, agents and employees did, since January 6, 1950, and at all times since that date, have refused to bargain with Retail Clerks Union, Local 428, notwithstanding the fact that said Union is the sole bargaining agent of its employees.

(b) That on various dates since January 6, 1950, said employer has by its acts and conduct interfered with, restrained and coerced its employees in the exercise of their rights as guaranteed by Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

Retail Clerks Union, Local 428.

4. Address:

84 So. First Street, San Jose, California.
Telephone No: Cypress 3-2020.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

Retail Clerks International Association, AFL.

6. Address of National or International, if any:

Lafayette, Indiana.

Telephone No:

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES P. McLOUGHLIN,
(Signature of Representative of
Person Filing Charge.)
Secretary-Treasurer.

May 2, 1950.

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80.)

[Received in evidence as General Counsel's Exhibit No. 1, Nov. 13, 1950.]

Form NLRB-501

United States of America
National Labor Relations Board

FIRST AMENDED
CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 20-CA-378.

Date Filed: 8/9/50.

Compliance Status Checked by: 11-15-50 E.L.

1. Employer Against Whom Charge Is Brought:

Name of Employer: W. T. Grant Company.

Address of Establishment: 146 South First Street, San Jose, California.

Number of Workers Employed:

Nature of Employer's Business: Retail Variety Store.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

On or about January 25, 1950, it, by its officers, agents, and representatives, intimidated its employees by questioning them concerning their union activities; on or about February 22, 1950, it further interfered with employees' rights to bargain collectively by unilaterally granting a general wage increase, and on or about April 30, 1950, it threatened

to close its store rather than to submit to operation of a "union-shop" establishment.

On or about January 25, 1950, it, by its officers, agents and representatives refused to bargain collectively with Retail Clerks Union 428, a labor organization chosen by a majority of its employees in an appropriate unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

By the above acts and by other acts and conduct, it, by its officers and agents, restrained and coerced employees and is restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

Retail Clerks Union, Local 428.

4. Address:

84 South First Street, San Jose, California.

Telephone No: Cypress 3-2020.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

Retail Clerks International Association, AFL.

6. Address of National or International, if any:

Lafayette, Indiana.

Telephone No:

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ FRANCIS J. McTERNAN, JR.,
(Signature of Representative of
Person Filing Charge.)

Attorney for Retail Clks.
Union, Loc. 428.

Aug. 8, 1950.

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80.)

[Received in evidence as General Counsel's Exhibit No. 5, Nov. 13, 1950.]

United States of America, Before the National
Labor Relations Board, Twentieth Region

Case No. 20-CA-378

In the Matter of
W. T. GRANT COMPANY
and
RETAIL CLERKS UNION, LOCAL 428, A.F.L.

COMPLAINT

It having been charged by Retail Clerks Union, Local 428, A.F.L., that W. T. Grant Company has engaged in, and is now engaging in, certain unfair labor practices affecting commerce as set forth in

the National Labor Relations Act, as amended, 29 U.S.C.A. 141, et seq. (Supp. July, 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges:

I.

W. T. Grant Company, herein called the Respondent, is a Delaware corporation with its corporate office in Delaware and its executive offices in New York, New York. Respondent is engaged in the business of selling and distributing merchandise in various states of the United States and owns and operates retail stores in various states of the United States, including the State of California.

II.

(a) Only the retail store owned and operated by the Respondent and located in San Jose, California, is involved in this proceeding.

(b) During the fiscal year ending January 31, 1950, the Respondent purchased merchandise for sale at retail at its San Jose, California, store valued in excess of \$100,000.00, of which amount approximately 90 per cent was shipped to said store from points located outside the State of California.

III.

Retail Clerks Union, Local 428, affiliated with the

American Federation of Labor, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

IV.

All employees at Respondent's San Jose, California, store, excluding supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

V.

At all times material to the issues herein, a majority of the employees of Respondent in the appropriate unit as set forth in paragraph IV, above, designated the Union as their representative for the purposes of collective bargaining with the Respondent, and at all times material to the issues herein, the Union has been the representative for the purposes of collective bargaining of the majority of the employees in said unit and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.

VI.

On or about January 25, 1950, and at all times thereafter up to and including the date hereof, Respondent, through its officers, agents and representatives, did fail and refuse, and continues to fail and refuse to bargain collectively with the Union

as the exclusive representative of all the employees in the appropriate unit above described in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VII.

At various times in or about February, 1950, and thereafter, the Respondent by and through its officers, agents and representatives, engaged in the following acts and conduct:

(1) Interrogated employees as to their union affiliations;

(2) Interrogated employees as to their union activities;

(3) Offered and granted a unilateral wage increase to their employees;

(4) Offered and granted to their employees a reduction in the work week;

(5) Threatened to close their store and cease operations in San Jose, California, if the store was organized by the Union.

VIII.

By the acts set forth in paragraph VI, above, the Respondent did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

IX.

By the acts set forth in paragraphs VI and VII (1) to (5), both inclusive, above, the Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its em-

ployees in the exercise of their rights guaranteed them by Section 7 of the Act, and did thereby engage in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

X.

The acts of the Respondent, set forth in paragraphs VI and VII (1) to (5), both inclusive, above, occurring in connection with the operations of the Respondent described in paragraphs I and II (a) and (b), both inclusive, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XI.

The aforesaid acts of the Respondent, as set forth in paragraphs VI and VII (1) to (5), both inclusive, above, and each of them, constitute unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 31st day of August, 1950, issues this, his Complaint, against W. T. Grant Company, Respondent herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
Twentieth Region.

Received in evidence as General Counsel's Exhibit No. 6, Nov. 13, 1950.

United States of America, Before the National
Labor Relations Board, Twentieth Region

Case No. 20-CA-378

In the Matter of
W. T. GRANT COMPANY
and
RETAIL CLERKS UNION, LOCAL 428, A.F.L.

ANSWER

W. T. Grant Company, the Respondent herein, answering the complaint issued by the General Counsel of the National Labor Relations Board, on behalf of the Board,

First: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint designated "III."

Second: Denies each and every allegation contained in the paragraphs of the complaint designated "V," "VII," "VIII," "IX," "X" and "XI."

Wherefore, the Respondent respectfully contends that the complaint herein should be dismissed.

W. T. GRANT COMPANY.

/s/ F. C. LUSTENBERGER,

Executive Vice-President.

Dated New York, N. Y., September 6, 1950.

Received in evidence as General Counsel's Exhibit No. 9, Nov. 13, 1950.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT

W. T. Grant Company, the Respondent herein, hereby takes exception to the Trial Examiner's report and recommended order and specifically excepts:

1. To the Examiner's finding (p. 2, line 60) that none of the authorizations was revoked.

2. To the Examiner's failure to find that to all intents and purposes the authorization signed by Omera Guillory was revoked. (Transcript of Testimony, pp. 79, 184.)

3. To the Examiner's refusal to admit evidence of a conversation between two employees whereby one, in effect, revoked an authorization that she had signed. (Transcript of Testimony, p. 185.)

4. To the Examiner's finding (p. 3, line 10) that on January 5, 1950, the union had "obtained authorizations from a majority of Respondent's employees." (Transcript of Testimony, p. 18.)

5. To the Examiner's denial (Transcript of Testimony, p. 177) of Respondent's motion (Transcript of Testimony, p. 176) to dismiss, for failure of proof, the allegation of the complaint (VII(5)) that the Respondent "threatened to close their store and cease operations in San Jose, California, if the store was organized by the Union."

6. To the Examiner's refusal to find that, on the same page of Respondent's Manual from which the

paragraph "Union's Demand for Recognition" (p. 3, lines 20-38) was taken it is said:

"Manager is not to be curious or in any way interested as to whether an employee does or does not belong to union, or the extent of an employee's union activities. No one is favored because of membership or non-membership in any union."

7. To the Examiner's finding (p. 3, lines 44, 45) that "there was no substantial dispute as to appropriate unit."

8. To the Examiner's finding (p. 4, line 5) that 23 (rather than 13) employees received merit increases during the week ending February 23, 1950.

9. To the Examiner's finding (p. 4, line 11) that "Respondent's store manager admitted that he had never previously, in his experience as manager of the San Jose store, granted so many merit increases at one time."

10. To the Examiner's failure to find that merit increases are generally given in a group (p. 4, line 49).

11. To the Examiner's finding (p. 4, lines 6-8) that the change for thirteen female employees from a 40-hour, 6-day work week, to a 40-hour, 5-day work week was "a change considered desirable by most of the female employees."

12. To the Examiner's finding (p. 5, lines 1-5) that during the week of February 23, 1950, the store

manager bestowed "substantial benefits on a majority of his female employees."

13. To the Examiner's finding (p. 5, line 12) that the store manager bestowed benefits "for the purpose of inducing employees to refrain from or disavow their union affiliation and activities," and "for the purpose of discouraging union affiliation" (p. 5, line 20).

14. To the Examiner's finding (p. 5, line 55) that the Kihs letter (Respondent's Exhibit No. 1) "was in the nature of a report of a union meeting."

15. To the Examiner's failure to find that the Kihs letter (Respondent's Exhibit No. 1) was a report of the union's counter-argument to the effect that if a majority of the employees selected the union as their bargaining agent it would compel Respondent to require all its employees, as a condition of employment, to become union members.

16. To the finding, implicit in the Examiner's statement at line 20, et seq. (p. 7) that Respondent's communications to its employees were robbed of their privilege because of Respondent's failure to produce evidence of probative worth showing that such communications were prompted by and were made in response to inquiries from the employees.

17. To the Examiner's finding that the question as to whether Respondent showed a fixed intention not to bargain on a bargainable subject, i.e., the union shop (p. 6, line 14) is to be determined not

by the language of the notice (G. C. Exhibit No. 56) and the letter (G. C. Exhibit No. 58) but by the impact "upon the minds of the employees" (p. 8, lines 1-9).

18. To the Examiner's finding that the notice (G. C. Exhibit No. 56) and the letter (G. C. Exhibit No. 58) were coercive and therefore not privileged under Section 8(c) of the Act.

19. To the Examiner's refusal to find that on March 16, 1950, the union's business agent (Transcript of Testimony, pp. 83, 89) invaded Respondent's store (Transcript of Testimony, p. 190), disarranged merchandise (Transcript of Testimony, pp. 190, 198, 199, 231, 232) and asked a customer not to patronize the store (Transcript of Testimony, pp. 91, 232).

20. To the Examiner's refusal to find that the statement in the letter of April 27th (G. C. Exhibit No. 58) that "if we can't do business in San Jose on an open-shop basis, we just won't do business in San Jose," followed the misconduct on the part of the union representative set forth in the nineteenth exception.

21. To the Examiner's finding (p. 7, line 50) that the letter of April 27, 1950 (G. C. Exhibit No. 58), was intended to deprive union-minded employees of any hope of achieving union security in the form of a union shop.

22. To the Examiner's finding that it is reasonable to construe the letter of April 27, 1950 (G. C.

Exhibit No. 58), as meaning that Respondent's store "would close before it would be unionized" (p. 8, line 5, et seq.; p. 6, line 29).

23. To the Examiner's failure to find that the letter of April 27, 1950 (G. C. Exhibit No. 58), was designed to prevent coercion of employees.

24. To the Examiner's finding (p. 8, line 18) that the publication of the notice (G. C. Exhibit No. 56) and the letter of April 27, 1950 (G. C. Exhibit No. 58), constituted interference, restraint and coercion within the meaning of Section 8(a)(1) of the Act.

25. To the Examiner's finding (p. 9, line 25) that the assistant manager, Mrs. Kleidon, questioned employees concerning their union activities.

26. To the Examiner's finding that Mrs. Kleidon's comments about union buttons were coercive (p. 9, line 28).

27. To the Examiner's failure to find that Mrs. Kleidon's remarks about the wearing of union buttons were privileged under Section 8(c) of the Act.

28. To the Examiner's finding that Mrs. Kleidon's gratuitous remarks about the wearing of union buttons were made in the scope of her employment (p. 9, line 25).

29. To the Examiner's finding that as a result of Mrs. Kleidon's remarks about union buttons "Respondent interfered with, restrained and coerced

its employees within the meaning of Section 8(a)(1) of the Act (p. 9, line 25).

30. To the Examiner's finding (p. 9, line 51) that the Respondent had no absolute right to have determined by an election the union's claim that it represented a majority of Respondent's employees.

31. To the Examiner's finding that there was no evidence that Respondent had a bona fide doubt that the union represented a majority of its employees (p. 9, line 56).

32. To the finding, implicit in the Examiner's statement, that since there was no evidence that Respondent had a bona fide doubt of the union's majority status it could not properly ask "for proof of such majority" (p. 9, lines 52, et seq.).

33. To the Examiner's finding (p. 10, line 3) that "there was no dispute between the parties on the appropriate unit."

34. To the Examiner's finding (p. 10, line 4) that Respondent's refusal to enter into an agreement for an election, as distinguished from a Board-directed election, "was indicative of a desire and intention to delay the determination of the issue."

35. To the Examiner's finding that Respondent violated Section 8(a)(5) and Section 8(a)(1) of the Act "by refusing to recognize and bargain with the union on January 25, 1950" (p. 10, lines 16-20).

36. To the Examiner's Conclusions of Law numbered 3, 4, 5 and 6 (p. 11, lines 13-34).

37. To the Examiner's refusal to find that when announcing in February, 1950, that some employees would receive merit increases, some others would be promoted to unfilled positions and that the thirteen employees, then working on a 6-day, 40-hour basis, would have their work week changed to a 5-day, 40-hour basis, the Respondent's store manager informed the employees that anyone who wanted to join the union was free to do so. (Transcript of Testimony, p. 109, line 9.)

38. To the amendment of the Complaint during the hearing by adding a subdivision reading as follows:

“(6) Notified the employees of the Respondent's San Jose store and the Union that the Respondent would never bargain about or agree to any Union security for the employees of the Respondent's San Jose store.” (Transcript of Testimony, p. 16.)

39. To the Examiner's sustaining the Union's objection to Respondent's efforts to show that the wage increases it granted to its employees did not bring its scale beyond the going rate. (Transcript of Testimony, p. 49.)

40. To the Examiner's refusal to find that at the meeting of January 25, 1950, the Union and Respondent discussed the company's attitude on compulsory union membership and deferred bargaining on the point pending the determination as to whether the union was or was not the spokesman for the employees. (Transcript of Testimony, p. 32.)

41. To the Examiner's failure to find that on January 25, 1950, Respondent told the union that it did not look with favor on compulsory union membership (Transcript of Testimony, pp. 32, 235), and that the union countered, "We'll never go for that" (Transcript of Testimony, p. 237), or "We just can't go for that" (Transcript of Testimony, p. 203).

42. To the Examiner's failure to find that the union indicated on January 25th a fixed intention to refuse to bargain on a bargainable issue, i.e., the union shop.

43. To the Examiner's refusal to find that those of Respondent's employees who preferred to work on a 5-day, 40-hour week, instead of on a 6-day, 40-hour week could, for the mere asking, have their schedule changed to a 5-day week. (Transcript of Testimony, pp. 141, 161, 164, 182, 197.)

44. To the Examiner's refusal to find that Respondent's employees never manifested to the union any grievance as to a 6-day work week, and the union in turn never discussed the matter with the employees. (Transcript of Testimony, p. 78.)

Respectfully submitted,

W. T. GRANT COMPANY,

By /s/ EUGENE M. FOLEY,

Attorney.

United States of America, Before the National
Labor Relations Board

Case No. 20-CA-378

In the Matter of:

W. T. GRANT COMPANY,

and

RETAIL CLERKS UNION, LOCAL 428, A.F.L.

DECISION AND ORDER

On November 30, 1950, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Ex-

¹Pursuant to the provision of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

aminer with the modifications and additions set forth below.²

1. The Trial Examiner found, and we unani-
mously agree, that the Union represented a ma-
jority of the Respondent's employees in a certain
appropriate collective bargaining unit on and after
January 25, 1950,³ and that on and after that date
the Respondent refused to bargain collectively with
the Union, in violation of Section 8 (a) (1) and
(5) of the Act. Thus, on January 25, 1950, the
Respondent's counsel, Eugene M. Foley, during a
meeting with the Union, rejected the Union's
several proposed methods for quickly substantiat-
ing its majority and insisted that a petition for
certification be filed with the Board. There would
have been nothing unlawful in the Respondent's
insistence upon a Board election if it had been mo-
tivated by a genuine doubt that the Union repre-
sented a majority of its employees. However, we
cannot find that this was the case. During the week
ending February 23, less than a month later, the
Respondent, without consulting the Union and for

²The Respondent's unopposed motion to correct
the stenographic transcript of the hearing is hereby
granted. Its request for oral argument is denied
because the record, exceptions and brief, in the
opinion of the Board, adequately reflect the issues
and positions of the parties.

³The record reveals, contrary to the Trial Ex-
aminer's findings, that the Union first established
its majority on January 6, 1950, not January 5, .
1950.

the purpose of discouraging union affiliation by its employees, gave alleged merit wage increases or promotions to 23 of the 36 girls on its pay roll and reduced the work week from 6 days to the more desirable 5-day week for 13 of its employees.⁴ Further, as the Trial Examiner found, the Respondent, in violation of Section 8 (a) (1) of the Act, interrogated its employees concerning the wearing of union buttons. In these circumstances we must conclude, as did the Trial Examiner, that the Respondent's insistence upon a Board election was not motivated by a good-faith doubt concerning the Union's majority status, but rather by a desire to gain time to undermine the Union and destroy its majority.⁵

2. A majority of the Panel also agrees with the Trial Examiner that the Respondent violated Section 8 (a) (1) of the Act by notifying its employees in the way it did that it would never agree to a union shop. On February 11, 1950, Store Manager Kihs posted a notice on the store bulletin board advising the employees that the Respondent operated its San Jose store as an open shop and that this policy would not be changed. More important, late in April Kihs specifically emphasized

⁴The granting of these benefits, without consulting the Union, constitutes an independent violation of Section 8 (a) (5) of the Act even without regard to the Respondent's purpose. The Valley Broadcasting Company, 87 NLRB 1144.

⁵See Houston and North Texas Motor Freight, 88 NLRB 1462, and the cases cited therein.

the Respondent's determination to adhere to this policy, when he called certain individual employees into his office and showed them a letter from Foley which stated that "if we can't do business in San Jose on an open-shop basis, we just won't do business in San Jose."

Like the Trial Examiner, we do not believe that the Board's decision in *M. T. Stevens & Sons Company*⁶ is controlling here. In that case the Board, in the complete absence of any other unfair labor practice, was concerned solely with statements on company policy contained in a letter from the company's treasurer in answer to one written by an attorney who represented a group of employees opposed to unions. These employees reproduced the company's letter in pamphlet form and distributed it in front of the plant 3 days before a Board election. On these facts the Board⁷ held that, although the Respondent had taken the position in its letter that it would not compel an employee to join a union or consent to a check-off against his wishes, "a policy, however strongly held, may, and often does, yield at the bargaining table." In the *Stevens* decision, the Board further said that even if the Respondent's statements amounted to a fixed determination not to bargain on a bargainable subject, in the complete absence of any other unfair labor practice such statements, isolated as they

⁶68 NLRB 229 (1946).

⁷Member Houston dissenting.

were, did not tend to coerce employees within the meaning of the Act.⁸

That is not the case here. Here the Respondent posted the notice of February 11 on its own initiative. Before that notice was posted, the Respondent, as found above, had already violated Section 8 (a) (1) and (5) of the Act by refusing to bargain with the Union. After February 11, the Respondent committed further violations of the Act by interrogating employees concerning their union activities and attempting to dissipate the Union's majority. This was not the law-abiding atmosphere present in the Stevens case. Equally important, here the Respondent backed up its statement of policy with a threat to close its store rather than have a union shop, and it engaged in a course of conduct which was designed to relieve it of the necessity of ever having to yield to the Union on any point or even meet the Union across a bargaining table. In these circumstances we conclude that the posting of the notice on February 11, 1950, and the subsequent threat to close the store rather than grant a union shop, coerced the Respondent's employees in the exercise of the rights guaranteed by Section 7 of the Act.⁹

⁸The complaint in the Stevens case did not allege an unlawful refusal to bargain.

⁹See *Bergmann's, Inc.*, 71 NLRB 1020, 1034, where the Board, in adopting the Trial Examiner's Intermediate Report upon facts like those in the instant case, distinguished its ruling in the Stevens case. See also *United States Gypsum Company*, 90

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent W. T. Grant Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Retail Clerks Union, Local 428, A.F.L., as the exclusive representative of all employees at its San Jose, California, store, excluding supervisors, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) Conferring benefits on its employees for the purpose of inducing them to refrain from union affiliation and activities; questioning its employees concerning their union activity; threatening to close its San Jose store rather than accede to a union shop; or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks

NLRB No. 149; and Augusta Bedding Company, 93 NLRB No. 33.

Our dissenting colleague's references to the anticipatory character of the Respondent's conduct in the absence of a Section 9 (e) election would seem to us more pertinent here if the allegation involved in this portion of the case went to a violation of Section 8 (a) (5) rather than, as it does, on Section 8 (a) (1).

Union, Local 428, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Retail Clerks Union, Local 428, A.F.L., as the exclusive representative of all the aforesaid employees with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its San Jose, California, store, copies of the notice attached hereto, marked Appendix A.¹⁰ Copies of the said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Re-

¹⁰In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words: "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."

spondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Signed at Washington, D. C., June 7, 1951.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

James J. Reynolds, Jr., Member, concurring separately and dissenting in part.

I concur in all the findings and conclusions of the majority opinion except as it finds that "the Respondent violated Section 8 (a) (1) of the Act by notifying its employees that it would never agree to a union shop."

I do not believe that under the circumstances of this case, the Respondent's statements can be construed as reflecting an anticipatory refusal to bar-

gain concerning a union shop, for in my opinion—and the Board has not held to the contrary—an employer is under no obligation to bargain concerning a union shop absent the holding of a Section 9 (e) (1) union-shop authorization election among its employees.¹¹ Here, no such election had been held, nor has the Union at any time sought such an election.¹² For that matter, it does not appear that the Union is desirous of negotiating a union-shop agreement. Shrouded by this uncertainty, it is unrealistic to say that the Respondent's pronouncements concerning its union-shop policy now amount to a fixed determination not to bargain at a future appropriate time concerning the union shop. In this situation, therefore, no reason exists for not holding as the Board did in the Stevens case (63 NLRB 229) that "a policy, however strongly held, may, and often does yield at the bargaining table." Contrary to the holding of the majority opinion, the Respondent's other

¹¹See *United States Gypsum Company*, 94 NLRB No. 27, footnote 9.

¹²For this reason, *United States Gypsum Company*, 90 NLRB No. 149, cited in the majority opinion, is distinguishable, as there the respondent's statements were made during the pendency of a petition for a Section 9 (e) (1) union-shop authorization election. Similarly, the *Bergmann* case (71 NLRB 1220) also cited in the majority opinion is inapposite. There the threats concerning union security were made immediately preceding an election, which at that time would have enabled the union, if selected, to bargain for union security. Cf., also, *F. W. Woolworth Co.*, 93 NLRB No. 173.

unfair labor practices do not preclude the application of the Stevens case reasoning, for the Board has held, despite the commission of other unfair labor practices that an employer's statements that it would not be "a party to any agreement" embodying union security did not establish "such a fixed determination by the respondent not to bargain later concerning union security as can reasonably be regarded as constituting interference with the rights of employees within the meaning of Section 8 (1) of the Act."¹³

For the foregoing reasons, I would not find that the Respondent violated Section 8 (a) (1) of the Act by its conduct with respect to the union shop.

Signed at Washington, D. C., June 7, 1951.

JAMES J. REYNOLDS, JR.,
Member.

NATIONAL LABOR
RELATIONS BOARD.

¹³LaSalle Steel Company, 72 NLRB 411, 413. See also Tygart Sportswear Company, 77 NLRB 613, 614, 624, where the Board found that a statement by an employer that the plant would remain an "open shop" did not violate Section 8 (a) (1); and Brown and Root, Inc., 86 NLRB 520, 521, 526, where, despite violations of Section 8 (a) (1) and (5), the Board found that the employer's statement that it "had not worked and would not work under a union 'contract' " was not violative of the Act. Cf. Westinghouse Pacific Coast Brake Company, 89 NLRB No. 16.

Appendix A

Notice to All Employees

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not confer benefits upon our employees for the purpose of inducing them to refrain from union affiliation and activities.

We Will Not question our employees concerning their union activities, or threaten to close our San Jose store rather than accede to a union shop.

We Will Not in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks Union, Local 428, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement which requires membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will Bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of our San Jose store excluding supervisors as defined by the Act.

All of our employees are free to become, remain or refrain from becoming or remaining members of Retail Clerks Union, Local 428, A.F.L., or any other labor organization, except to the extent that their right may be affected by a lawful agreement which requires membership as a condition of employment.

Dated.....

W. T. GRANT COMPANY,
(Employer)

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

Upon an amended charge duly filed by Retail Clerks Union, Local 428, AFL, herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director of the Twentieth Region (San Francisco, California), issued his complaint dated August 31, 1950, against W. T. Grant Company, San Jose, California, herein called the Respondent, alleging that the Respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, the complaint and a notice of hearing were duly served on the Respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that the Respondent refused to bargain with the Union, the duly designated representative of a majority of its employees in an appropriate unit, in violation of Section 8 (a) (5) of the Act, and thereby, and because of specifically enumerated acts, statements, and conduct, interfered with, restrained and coerced its

¹The General Counsel and his representative at the hearing will be called herein the General Counsel; the National Labor Relations Board, the Board.

employees in violation of Section 8 (a) (1) of the Act. In its duly filed answer the Respondent denied the commission of the alleged unfair labor practices. The Respondent's motion for a bill of particulars, referred to the undersigned for ruling prior to the hearing, was granted in part, denied in part.

Pursuant to notice a hearing was held at San Jose, California, on November 13, 14, 1950, before William E. Spencer, the undersigned duly designated Trial Examiner. All parties were represented at and participated in the hearing where full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded them.

At the close of the General Counsel's case-in-chief, the Respondent moved to dismiss certain allegations of the complaint because of failure of proof. The motion was denied. Upon the completion of the evidence, the General Counsel's unopposed motion to conform the pleadings to the proof in formal matters, was granted. The parties waived oral argument before the undersigned but participated in a discussion of issues in response to questions asked by the Trial Examiner. Memorandum briefs have been received from the General Counsel and the Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

1. The business of the Respondent

W. T. Grant Company is a Delaware corporation with an office in Delaware and its executive offices in New York, New York. It is engaged in the business of selling and distributing merchandise in various States of the United States, including the State of California. It operates approximately 495 retail stores which are located in 39 States of the United States. Only its retail store located in San Jose, California, is involved in this proceeding.

During the fiscal year ending January 31, 1950, the Respondent purchased merchandise for sale at its San Jose, California, store valued in excess of \$100,000, of which amount approximately 90 per cent was shipped to said store from points located outside California.

The Respondent admits that it is engaged in commerce within the meaning of the Act.

II. The labor organization involved

Retail Clerks Union, Local 428, AFL, is a labor organization admitting to membership employees of the Respondent.

III. The unfair labor practices

1. The appropriate unit

The complaint alleges, the Respondent admits, and it is found, that all employees at the Respondent's San Jose, California, store, excluding super-

visors as defined in the Act, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. The Union's majority

As of the pay roll week ending January 25, 1950, there were 40 employees in the appropriate unit at Respondent's San Jose store. Of these, 21 signed the Union's authorization cards on or before January 5, 1950. These authorizations were never revoked. Respondent's counsel asserted at the hearing that the Union employed coercion in obtaining its majority, but offered no evidence to support the contention. It is immaterial in determining the Union's majority status that some of those signing authorization cards attended no or few union meetings or otherwise indicated a lack of interest in union activities. Accordingly, it is found that on January 25, 1950, and at all times material herein, the Union was, and now is, the exclusive bargaining representative of all the employees in the unit described above.

3. The scope and character of the issue

On January 5, 1950, the Union having obtained authorizations from a majority of Respondent's employees, notified Respondent's store manager, Francis J. Kihs, of its designation as bargaining representative and requested a meeting for the purpose of negotiating a contract. A meeting of the parties was held on January 25, and at this meet-

ing, Respondent's counsel, Eugene M. Foley, declined the Union's proposals for substantiating its majority, and insisted that the Union file a petition for certification with the National Labor Relations Board. Foley stated that this was Respondent's standard procedure in matters concerning representation, and referred to the Respondent's manual which contains the following instructions to store managers:

e. Union's Demand for Recognition

If a union representative claims that he represents employees of our store, Manager informs him that he should submit his evidence to the National Labor Relations Board and petition for an election. If, when making his claim, he hands Manager a form of contract, Manager is to forward it to Personnel Department, New York Office.

Manager is not to examine employees' union membership cards, nor is he to make any attempt to ascertain whether or not a majority of employees have signed cards or to find out what demands will be made by the union. Detailed report of union representative's claims is to be made to Regional Manager and to Personnel Department, New York Office.

The Union agreed to Foley's proposal and on January 31 filed a representation petition with the Board. The Respondent thereafter refused to enter into a consent election agreement for the purpose

of expediting the determination of the representation issue, and insisted on a formal hearing on the Union's petition, although there was no substantial dispute as to appropriate unit. The hearing was held on March 3, and on April 4 the Board issued its Decision and Direction of Election.² The election was thereafter scheduled for May 3, but prior thereto the Union withdrew its petition for certification and filed the unfair labor practice charge upon which this proceeding is predicated.

The basic, though not sole, issue to be determined here is whether the Respondent's refusal on January 25 to recognize the Union until its majority had been established through a Board election was made in good faith, or was a tactical maneuver to afford the Respondent time in which to undermine the Union and destroy its majority.

4. Promotions, wage increases and changes in the work week

During the week ending February 23, of the 36 girls then on Respondent's pay roll, 23 received merit increases; in some instances promotions, also, were involved. At the same time, 13 employees were changed from a 40-hour, 6-day week to a 40-hour, 5-day week, a change considered desirable by most of the female employees. An announcement of this change was made some two weeks earlier. The Union was not consulted on any of these matters.

Kihs, Respondent's store manager, admitted that

²Case No. 20-RC-780.

he had never previously in his experience as manager of the San Jose store, granted so many merit increases at one time, and was unable to recall specifically any prior occasion when such increases had been granted on a group basis.³ His testimony affords no plausible explanation for the timing of these increases.

As to the promotions, Kihs testified that these were made to fill vacancies and that more than a normal number of vacancies had arisen due to marriages and pregnancies among the female employees. His further testimony, however, failed to establish that more than a negligible number of vacancies had arisen at the time the promotions were made effective. He testified that several of the

³Kihs' testimony:

Q. Well, now, limiting the scope of my question to the San Jose store, have you ever granted that many merit increases, or more, at any one time previous to February, 1950?

A. Not to my knowledge.

Q. Did you ever grant as many as a dozen at one time previous to February, 1950?

A. It is possible that I did.

* * *

Q. Now, what has been your practice in the San Jose store; have you normally announced merit increases, one at a time, or more than one at a time? What has been your normal practice over the entire time that you have been at the San Jose store?

A. I would say generally they would be in a group.

Q. Well, can you be a little more specific? Do you have a recollection, in other words, of a group that you gave out any time prior to February, 1950?

A. No, sir.

girls who were promoted had been on a "relief" or probational basis for weeks or months before the promotions were made effective.

As to the change in the work week from 6 to 5 days, it appears that all of the female employees except the 13 affected by the action on the week of February 23, were already working the 5-day week. Kihs testified that he normally honored the request of a female employee to change from a 6 to 5-day week, after she had been in his employ for a time, but he could recall but one employee who had made such a request at the time this change affecting 13 employees was made.⁴

It is clear from Kihs' testimony that his action during the week of February 23 in bestowing substantial benefits on a majority of his female employees, was without parallel in his experience as manager of the San Jose store. Inasmuch as his testimony affords no plausible or convincing explanation for the timing of these benefits, the explanation must be sought elsewhere. On January 31 the Union had filed its petition for certification.

⁴Kihs' testimony:

Q. Do you have any particular explanation—there may be none required—as to why you made this effective as to 13 girls at one time?

A. No, sir.

Q. Do you recall whether or not these particular 13 girls had all requested the five-day week at about this time?

A. No, sir. I can remember one girl distinctly having requested it, but I couldn't remember any more than that one.

There was a reasonable expectation amounting to practically a certainty, that in due course an election would be held to determine the issue of representation. If, in the interim, the employees received many of the benefits which they would hope to gain through union representation, there would be correspondingly less incentive for them to work and vote for the Union. That the bestowal of benefits for the purpose of inducing employees to refrain from or disavow their union affiliation and activities, is violative of the Act, is firmly established in decisions of the Board and the courts. That such was Respondent's purpose in granting benefits to a majority of its female employees during the week ending February 23, is the only reasonable conclusion that can be reached on the basis of the evidence offered in this proceeding. Accordingly, it is found that by the granting of benefits to its employees for the purpose of discouraging union affiliation, the Respondent interfered with, restrained and coerced its employees within the meaning of Section 8 (a) (1) of the Act.

4. Declarations on the union shop

On February 11, 1950, Kihs posted the following notice on the bulletin board at the San Jose store:

There is a rumor that sooner or later you will be required, as a condition of employment, to join a labor union. There Is Not a Grain of Truth in This Rumor. You Don't Have to Join, Nor Need You Refrain From Joining

Any Union to Work at Grants. This Store Is an Open Shop in the True Sense of the Word. It Is Our Policy to Employ Members of Unions as Well as Non-Members and Neither Is Favored Over the Other in Any Aspect of Employment. This Policy Will Not Be Changed.

This notice was copied almost verbatim from Respondent's manual of instructions to its store managers.

Late in April, Kihs called several employees to his office and showed them a letter he had received from Respondent's counsel, Foley. The text of the letter, dated April 27, follows:

I received your letter this morning,⁵ and my inclination was to write to you immediately to the effect that it is settled Company policy that we will not operate a union shop in San Jose or elsewhere. However, in order to make assurance doubly sure, I decided to "check" with Mr. Lustenberger, but I wasn't able to reach him until a few minutes ago.

⁵Kihs' letter to Foley was in the nature of a report on a union meeting. It stated inter alia: "I have received the following information regarding the meeting. Five of my people attended. They were told that in spite of my statement I had made that if the Union gets in this store will be a Union shop and not an open shop." The letter further stated, inter alia, "The above covers pretty much what took place in the meeting. Of course my information is second hand so I am just quoting another person's word."

As a result of my conversation with him I think we can take a definite position to the effect that we will not agree to a union shop in San Jose under any circumstances, and further that if we can't do business in San Jose on an open shop basis, we just won't do business in San Jose. I trust that you still have posted the notice to the effect that no one need join the union in order to work in Grant's. If by chance that notice was taken down I suggest you put it up again.

It is the General Counsel's position that the publication of the aforesaid notice and letter to the employees was violative of the Act inasmuch as they represented a fixed intention not to bargain on a bargainable subject, and had the necessary effect of threatening to deprive the employees of one of the legitimate goals of unionization, the union shop.

It can hardly be disputed that upon compliance with the requirements of Section 8 (3) of the Act by a labor organization, the union shop is a proper subject for collective bargaining. It follows that where these requirements have been met, an employer is under the same duty to bargain in good faith on the union shop as on the subject of wages, hours, or any other condition of employment. It is also true, I think, that any declaration by an employer to his employees that he will not bargain on this or any other proper subject of collective bargaining, amounts to coercion within the mean-

ing of the Act. Our inquiry is now narrowed to the significance of the combined language of the notice and the letter, set forth above, and its reasonable effect on the minds of the employees, with proper reference to such authorities as exist in the matter.

In *M. T. Stevens & Sons Company*, 68 NLRB 229, relied on by the Respondent,⁶ the Board decided that the following statements contained in a letter which was written by an employer to certain of his employees in answer to inquiries addressed to him by those employees, were not violative of the Act:

“* * * at no time will the Company compel an employee to become a member of any particular union as a condition of employment.”

“* * * under no condition will the Company agree to deductions in wages against any employee's wishes to cover dues or assessments.”

The Board in reaching this conclusion stated, *inter alia*:

While we agree with the Trial Examiner that the closed-shop⁷ and check-off are proper sub-

⁶Other decisions considered in reaching the conclusions herein are: *Bergmann's, Inc.*, 71 NLRB 1020; *Julius Cohn d/b/a Comas Manufacturing Company*, 59 NLRB 208; *Cameron Can Machinery Company*, 57 NLRB 1768; *Tampa Electric Company*, 56 NLRB 1270; *Young's Motor Freight Lines*, 91 NLRB No. 226; *Tygart Sportswear Company*, 77 NLRB 613.

⁷This case arose under the Wagner Act.

jects of collective bargaining, we do not believe that, by its statements quoted above, the Respondent did in fact indicate to its employees a fixed determination not to bargain on these matters. The Respondent declared, in response to the inquiries of employees, what its "policy" would be. But a policy, however strongly held, may, and often does, yield at the bargaining table. Thus, in announcing such a policy, the Respondent cannot be regarded as having foreclosed the possibility of future bargaining with respect to the subject matters in question.

But even if we accept the interpretation placed by the Trial Examiner upon the Respondent's statements we do not concur in his conclusion that, in the complete absence of any other unfair labor practice, such statements, isolated as they were, tend to coerce employees within the meaning of Section 8 (1) of the Act.

In the case at bar, there is no evidence of probative worth that the Respondent's notice and letter were prompted by inquiries from interested employees,⁸ and they do not constitute "isolated"

⁸There is no evidence to support Respondent counsel's contention that the Union "threatened" the employees with its declarations on the union shop. Doubtless, it was held out to the employees as one of the goals of unionization. Respondent in its brief filed with the undersigned, appears to attempt to link the Foley letter with alleged miscon-

statements, inasmuch as the Respondent's other conduct during the same period of time is found to have constituted unfair labor practices. These distinguishing factors may be regarded as slight, but are not entirely irrelevant in determining whether the Respondent's notice and letter were coercive, inasmuch as the presence or absence of the element of coerciveness here depends upon the reasonable impact of the combined language of the notice and letter upon the minds of the employees under all attendant circumstances. Thus considered, I am of the opinion that they were coercive and therefore not privileged under Section 8 (c) of the Act.

It can hardly be questioned that an employer is as free to state to his employees his opposition to the union shop as a labor organization is free to advocate it. But the Respondent here has done more than inform its employees on its general policy in such matters. In the February 11 notice, after setting forth a general policy, it stated, unequivocally: This policy will not be changed. The notice standing alone would probably not be violative of the Act, as it is subject to the interpretation that it referred to the closed shop and, in any event, has language that is little stronger, if any, than that found harmless in the *M. T. Stevens & Sons Com-*

duct on the part of a representative of the Union in entering the Grant store and disarranging some of its merchandise. Assuming *arguendo* that the misconduct occurred, it would have no possible bearing on the issue of the union shop.

pany case. But in the Foley letter of April 27, specifically called to the attention of several employees by Kihs, this further supplementary language appears: "[We] will not agree to a union shop in San Jose under any circumstances, and further . . . if we can't do business in San Jose on an open shop basis, we just won't do business in San Jose." If the combined language of this notice and this letter does not portray a fixed intention not to bargain on a bargainable subject, I shall henceforth be somewhat sceptical of language as affording a proper vehicle for the expression of man's thoughts and intentions. I am also of the opinion that it was intended to and had the reasonable effect of depriving union-minded employees of any hope of achieving union security in the form of a union shop. Illustrative of its impact on the minds of the employees, is the unrefreshed recollection of the witness Evelyn De Janvier, a witness who on the whole appeared favorably inclined toward the Respondent, of the contents of the Foley letter shown her by Kihs: "As I recall it, it was that the San Jose store would close before it would be unionized; it would take its business elsewhere." Efforts to obtain the union shop being one of the familiar and legitimate forms of union activities, it is not unusual that the witness should have identified the union shop as unionization itself.

It is true that the Respondent's policy on the union shop might change,⁹ as might its policy on

⁹It appears from statements of counsel that a union shop clause is incorporated in a contract cov-

any other bargainable matter, but its announcement of a fixed intention not to change is none the less coercive because of that. Employee reliance on the imponderables in the face of such pronouncements, would require an act of faith not contemplated by the Statute.

It is found that the publication to the employees of the February 11 notice and the Foley letter of April 27, constituted interference, restraint and coercion within the meaning of Section 8 (a) (1) of the Act.

5. Interrogation of employees concerning their union activities

After the first union meeting certain of the em-

ering the employees at one of Respondent's stores. Whether this indicates that Respondent's policy on the open shop is not a "fixed" one, is best considered in the light of its counsel's statement at the hearing: "As I say, I can negotiate a union shop; I think I have heard all the arguments in favor of a union shop and I have never heard a good one, but where I have negotiated union shops we have come to an agreement, made contracts with unions; none of them contained a union shop agreement except the one in East St. Louis, which is a community contract and which I inherited in 1940." Obviously, we are not concerned here with the merits or demerits of the union shop, but solely with the issue of whether Respondent's declarations on the matter were such that the employees would reasonably believe that the Respondent would refuse to bargain in good faith on the issue. Negotiating on an issue, and bargaining in good faith, needless to say, do not always amount to the same thing.

ployees wore union buttons while performing their duties at the San Jose store.

The assistant store manager, Mrs. Kleidon, commented to Evelyn De Janvier, one of those who had attended the union meeting, that she "had one of those pretty buttons, too." De Janvier testified that the remark was made "kiddingly."

When Nellie Putney wore her union button in the store after returning from her vacation of February 27, Kleidon asked her if she was the only girl in the store that was in the union. Putney testified concerning the incident: "Mrs. Kleidon—just kiddingly, I guess, to keep me from getting embarrassed—asked me if I was the only girl in the store that was in the union—jokingly, you know." The following examination ensued:

Q. And what did you say?

A. I didn't know what to say. I just took the button off.

In April Kleidon asked Martha Nix why she was still wearing her button. The following examination ensued:

Q. And did you make any reply?

A. I said I don't know, because she said it in kind of a joking way.

Nevertheless, thereafter when Nix wore her union button she wore it "on the underneath side" of her sweater.

The wearing of union buttons is a protected form

of union activity, and an employer has no more license to interrogate its employees on their wearing of these buttons than on their other union activities. Such questioning can be, and frequently is, coercive. From the testimony of these witnesses, it may be assumed that Kleidon was a very cordial supervisor. There is no reason to doubt that they were on friendly terms with her. There is good reason to doubt that either Putney or Nix actually regarded Kleidon's remarks and interrogations as merely pleasantries, for following Kleidon's comments they promptly removed their buttons. The testimony of De Janvier, Putney, and Nix that these comments or interrogations, as the case may be, were made "jokingly," was by no means convincing and can best be understood in the light of the promotions which each of them received during the week of February 23.¹⁰

It is found that by Kleidon's questioning of employees concerning their union activities, the Respondent interfered with, restrained and coerced its employees within the meaning of Section 8 (a) (1) of the Act.

6. Other alleged acts of interference,
restraint and coercion

After Victor J. Lazzaro, the Union's business representative, had visited the Grant store in San Jose on one or more occasions, and handed out

¹⁰Each was promoted to a department manager position.

authorization cards to some of the employees, Kihs issued instructions that thereafter the distribution of cards in the store was to be prohibited. The General Counsel argues that such action was violative of the Act. I do not agree. The distribution of such cards in the store has the reasonable effect of interfering with salesgirls in the performance of their duties, and customers in making their purchases, thereby constituting a potential disruption of services. I find that the Respondent's action, in this respect was not violative of the Act.

7. Conclusions on the refusal to bargain

At the meeting of representatives of the parties on January 25, the Respondent, in effect, refused to recognize and bargain with the Union until its majority had been established through a Board election. A Board election is only one of several ways in which the majority status of a labor organization may be determined, and, where only one labor organization is claiming representative status, an employer has no absolute right to have the matter determined by an election. If the Respondent had a bona fide doubt of the Union's majority it might very properly have asked for proof of such majority, and refused proof, might properly have withheld recognition until proof, in one form or another, was furnished it. There is no evidence here that the Respondent had a bona fide doubt of the Union's majority status, and it made its position clear that it would accept no proof of such

majority except through a Board election. The Union complied with its proposal and filed a petition for certification. Thereafter, it sought to expedite a determination of the issue of representation, by offering to enter into a consent election. The Respondent refused to sign such an agreement. Inasmuch as the Respondent did not question the Board's jurisdiction and there was no dispute between the parties on the appropriate unit, its refusal, under the circumstances, was indicative of a desire and intention to delay the determination of the issue. Its purpose in seeking delay became clear when, during the week ending February 23, it conferred substantial benefits on a majority of its employees without consulting the Union, thus undermining the Union as the designated representative of a majority of its employees. Its declarations of a fixed intention never to accede to the union shop and threat that it would close its San Jose store before it would do so, was also deliberately aimed at undermining the confidence of union adherents. These acts of delay, interference and coercion, when related to its refusal to recognize and bargain with the Union on January 25, are conclusive of its lack of good faith on that occasion.

It is found that by refusing to recognize and bargain with the Union on January 25, 1950, the Respondent violated Section 8 (a) (5) of the Act, and thereby interfered with, restrained and coerced its employees in violation of Section 8 (a) (1) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of the Respondent described in Section 1 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the Respondent engaged in unfair labor practices violative of Section 8 (a) (1) and (5) of the Act, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Having found that the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, the undersigned will recommend that the Respondent, upon request, bargain collectively with the Union as such representative, and if an understanding is reached, embody such understanding in a signed agreement.

The Respondent's refusal to recognize and bargain with the Union, and its efforts to undermine the Union and destroy its majority through acts of interference, restraint and coercion, portray an intention to interfere generally with the rights of its

employees guaranteed by the Act. It will therefore be recommended that the Respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in their right to self-organization.¹¹

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Retail Clerks Union, Local 428, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees at Respondent's San Jose, California, store, excluding supervisors as defined by the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

3. On January 25, 1950, Retail Clerks Union, Local 428, AFL, was, at all times since has been and now is, the representative of a majority of Respondent's employees in the appropriate unit described above for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after January 25, 1950, to bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all its employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor

¹¹May Department Stores, 66 S. Ct. 203.

practices within the meaning of Section 8 (a) (5) of the Act.

5. By said refusal, by conferring benefits on its employees for the purpose of inducing them to refrain from union affiliation and activities, by questioning employees concerning their union activities, and by threatening to close its San Jose store rather than assent to the union shop, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that W. T. Grant Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all employees in the appropriate unit at its San Jose, California store, with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Conferring benefits on its employees for the purpose of inducing them to refrain from union affiliation and activities; questioning its employees

concerning their union activities; threatening to close its San Jose store rather than accede to the union shop, or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to join or assist Retail Clerks Union, Local 428, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all employees in the appropriate unit at its San Jose, California, store with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its San Jose, California, store copies of the notice attached hereto, marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon

receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for the Twentieth Region (San Francisco, California), in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.

It is further recommended that unless the Respondent within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

Dated this 30 day of November, 1950.

/s/ WILLIAM E. SPENCER.

Appendix A

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks Union, Local 428, AFL, or any other labor organization, to bargain collectively through representatives of their own free choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement which requires membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

We Will Bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of our San Jose store excluding supervisors as defined by the Act.

All of our employees are free to become, remain, or refrain from becoming members of Retail Clerks Union, Local 428, AFL, or any other labor organization, except to the extent that their right to refrain may be affected by a lawful agreement which requires membership

in a labor organization as a condition of employment.

W. T. GRANT COMPANY,
(Employer.)

By ,
(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

MOTION FOR RECONSIDERATION

Sirs:

Please Take Notice that W. T. Grant Company, the respondent herein, hereby moves the National Labor Relations Board to reconsider that part of its decision dated June 7th, 1951, in which it is found that the respondent violated Section 8 (a) (5) of the Act in the light of the decision of the United States Court of Appeals, Sixth Circuit, in the case of National Labor Relations Board, Petitioner, v. Valley Broadcasting Company, Respondent, decided on or about June 1st, 1951.

Dated New York, N. Y., June 21, 1951.

Yours, etc.,

EUGENE M. FOLEY,
Attorney for Respondent.

To: Office of General Counsel, National Labor Relations Board, 821 Market Street, San Francisco, California;

Francis J. McTernan, Jr., Esq., Dreyfus, McTernan & Lubliner, Esqs., 57 Post Street, San Francisco 4, California.

[Title of Board and Cause.]

ORDER DENYING MOTION

On June 7, 1951, the Board issued a Decision and Order in the above-entitled proceeding, and thereafter, counsel for the Respondent filed a motion to reconsider the aforesaid Decision and Order of the Board in light of the decision of the United States Court of Appeals for the Sixth Circuit in Valley Broadcasting Company,¹ and on July 2, 1951, a Brief in Support of said motion. On June 26, 1951, the Union herein filed a telegram in opposition thereto. The Board having duly considered the matter,

It Is Hereby Ordered that the aforesaid motion be, and it hereby is, denied on the ground that a proper demand for bargaining was made, and therefore, the Valley Broadcasting Company decision is not applicable.

Dated Washington, D. C., July 11, 1951.

By direction of the Board:

/s/ LOUIS R. BECKER,

Acting Executive Secretary.

¹28 LRRM 2148, decided June 1, 1951.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-378

In the Matter of:

W. T. GRANT COMPANY

and

RETAIL CLERKS UNION, LOCAL 428, A.F.L.

Monday, November 13, 1950

Pursuant to notice the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: William E. Spencer, Esq.,
Associate Chief Trial Examiner.

Appearances:

EUGENE K. KENNEDY, ESQ.,

San Francisco,

Appearing on Behalf of the General
Counsel.

FRANCIS J. McTERNAN, ESQ.,

57 Post Street, San Francisco, California,

Appearing on Behalf of Charging
Party, Retail Clerks Union, Local
428, AFL.

EUGENE M. FOLEY, ESQ.,

1441 Broadway, New York, New York,

Appearing on Behalf of Respondent.

JAMES P. McLOUGHLIN, and

VICTOR LAZZARO,

84 S. First Street, San Jose, California,

Appearing for Local 428, AFL.

PROCEEDINGS

* * *

Mr. Kennedy: Mr. Examiner, at this time I should like to have marked for identification as General Counsel's Exhibit 1, the original Charge filed on May 2, 1950; General Counsel's 2 for identification, the Affidavit——

Trial Examiner Spencer: What was the date of the filing of the charge?

Mr. Kennedy: May 2, 1950. As General Counsel's 2 for identification, the original Affidavit of Service of a copy of the original Charge with a return receipt attached; as General Counsel's 3 for identification, an Affidavit of——rather, a copy of the First Amended Charge; as General Counsel's 4 for identification, an Affidavit of Service of a copy of the First Amended Charge; as General Counsel's 5 for identification, the [5*] original First Amended Charge filed August 9, 1950; as General Counsel's Exhibit 6 for identification, the original Complaint issued on the 31st of August, 1950; as General Counsel's 7 for identification, the original Notice of Hearing, issued on the 31st of August, 1950; as General Counsel's 8 for identification, the original Affidavit of Service of Notice of Hearing, Complaint and First Amended Charge, with return receipts attached; as General Counsel's 9 for identification, the original Answer, dated September 6, 1950; as General Counsel's 10 for identification, the original Affidavit of Service of the Notice of Change

* Page numbering appearing at top of page of original Reporter's Transcript.

of Place of Hearing, with return receipt cards attached; as General Counsel's 11 for identification, the original Notice of Change of Place of [6] Hearing.

* * *

Mr. Kennedy: The next document in order will be General Counsel's 12 for identification, which will be the original Motion for a Bill of Particulars, dated October 3, 1950; as General Counsel's 13 for identification, the Order on the Motion; as General Counsel's 14 for identification, the Response pursuant to the Order for the Bill of Particulars.

At this time, Mr. Examiner, I should like to offer in evidence General Counsel's Exhibits 1 through 14 for identification. [7]

* * *

Trial Examiner Spencer: Any further objection than the one that has been registered?

The exhibits will be received as offered. [10]

* * *

Mr. Kennedy: I should first like to move to amend paragraph two of the Complaint so that subsection B will read, in addition to the contents already in subsection B, will include the following: "during the fiscal year ending January 31, 1950, the net income of the Respondents was"——

Trial Examiner Spencer: Will you restate that, please?

Mr. Kennedy: "During the fiscal year ending"——

Trial Examiner Spencer: "January 31, 1950," is the way I understood it.

Mr. Kennedy: Yes.

Trial Examiner Spencer: Very well.

Mr. Kennedy: ——"the net income of the Respondent was approximately nine million dollars and the Respondent operates approximately 400 retail stores in most of the States of the United States of America." [12]

* * *

Trial Examiner Spencer: Well, is there any objection to this amendment of the Complaint?

Mr. Foley: I think it is immaterial, Mr. Examiner, for the reason that we have conceded we are subject to the Act, many times conceded we are subject to the Act. I have no knowledge as to the net income for the Grant Company.

Mr. Kennedy: Well, I will make available the source of my knowledge.

Mr. Foley: I suggest, Mr. Kennedy, that that doesn't answer the question, whether the amendment is material. I think we have made a concession here that we are subject to the Act, and I submit that that ought to suffice.

Trial Examiner Spencer: Well, of course, you don't confer jurisdiction by admitting it. The Board still has to have the basic facts.

Mr. Foley: Yes; well, I suggest that the General Counsel has commerce information which shows that this store does business in excess of 100,000 dollars, more than 90 per cent of which is imported from without the State of California.

Mr. Kennedy: Yes, and that is already alleged in the Complaint, Mr. Foley.

Mr. Foley: And that is admitted.

Mr. Kennedy: Yes. [13]

Mr. Foley: And I think that we have sufficient, despite any concession.

Trial Examiner Spencer: Now, you admit the commerce allegations as they now stand, unamended?

Mr. Foley: Yes, sir.

Trial Examiner Spencer: Well, I suppose that it might be of some interest to the Board as to the approximate number of stores and their distribution; could you stipulate to that?

Mr. Foley: Yes, I can stipulate that the W. T. Grant Company operates approximately 495 retail stores which are located in 39 of the United States.

Trial Examiner Spencer: And that this is one of those stores?

Mr. Foley: This is one of the 495.

Trial Examiner Spencer: Will you accept that stipulation, Mr. Kennedy?

Mr. Kennedy: Yes.

Trial Examiner Spencer: Does the Union accept that?

Mr. McTernan: Yes.

Trial Examiner Spencer: Very well, that much is stipulated. Now that leaves only the figure of nine million dollars as the approximate net income.

Mr. Kennedy: Now, I suggest that Mr. Foley might consider stipulating the San Jose store is

average or below or less than average, whatever the fact is with respect to this dollar [14] operation.

Mr. Foley: I just don't understand that, the dollar—of business that it does, or profit, or what?

Trial Examiner Spencer: The way you have stated this in the proposed amendment is "net income"?

Mr. Kennedy: That is correct.

Mr. Foley: I suggest, Mr. Examiner, if we had a nine million dollar loss we still would be subject to the Act.

Mr. Kennedy: Well, I believe that with the number of stores indicated in the record, that the General Counsel is satisfied.

Trial Examiner Spencer: Very well. It seems to me, I would say, that the matter of jurisdiction is well covered by the matter that is now admitted and stipulated.

You don't press your motion, then, to further amend the Complaint?

Mr. Kennedy: I withdraw the part that hasn't been satisfied.

I would also like to move to amend the Complaint at this time with respect to paragraph seven, by adding a subdivision thereof to be entitled "(6)" and to read as follows: "Notified the employees of the Respondent San Jose store and the Union that the Respondent would never bargain about or agree to any Union security for the employees of the Respondent's San Jose store." [15]

* * *

Mr. Kennedy: I will state all the facts with

respect to dates and persons that are presently available to us. This notification was made by two individuals, namely, Mr. Foley, presently [16A] counsel for the Respondent, and by Mr. Kihs, the Store Manager.

Trial Examiner Spencer: Spell that, please.

Mr. Kennedy: K-i-h-s. The date that this notification commenced was on or about January 25, 1950, and persists up to the present time, according to my best information.

Trial Examiner Spencer: Now, with that amplification I grant the motion to amend the [17] Complaint.

* * *

Mr. Kennedy: I would like to have the following marked for identification as General Counsel's Exhibits, as General Counsel's Exhibit No. 15, an authorization card dated January 4, 1940, signed—purportedly signed—by Maxine Rakestraw—

Trial Examiner Spencer: 1940?

Mr. Kennedy: 1950; January 4, 1950. As No. 16, an authorization signed January 6, 1950, by Omera Guillory; No. 17, an authorization dated January 6, 1950, signed by Betty Jean Beardsley; as No. 18, an authorization dated January 6, 1950, signed by Martha Nix; as No. 19; I'll state that these exhibits through 35 are all authorizations, and I will merely indicate the date and name: as 19, Adeline Loewen, January 4, 1950; [18]

* * *

Mr. Kennedy: I am not offering any of them yet, just having them marked and identified.

General Counsel's 36 for identification, copy of a letter dated January 5, 1950, addressed to F. J. Kihs, Manager, Grant Company, San Jose, from James P. McLoughlin, Secretary-Treasurer of the Retail Clerks Union, Local 428; [19]

* * *

JAMES P. McLOUGHLIN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

Q. Will you state your name, please?

A. James P. McLoughlin.

* * *

Q. What is your occupation?

A. I am the Secretary-Treasurer of the Retail Clerks Union, Local 428, A.F.L.

Q. And how long have you held that position?

A. I have been the Secretary of the Union since 1942; I was originally elected as Business Representative in December of 1937. [21]

* * *

Mr. Kennedy: Well, Mr. Examiner, inasmuch as the foundational requisites with respect to General Counsel's Exhibits for identification 36 through 50 have been met by a courtesy of Mr. Foley, a stipulation of Mr. Foley, at this time I should like to offer in evidence General Counsel's Exhibits 36 through 50 for identification. [25]

* * *

(Testimony of James P. McLoughlin.)

Trial Examiner Spencer: Very well, I think we probably understand each other, and the exhibits are received without objection, as offered. [26]

* * *

GENERAL COUNSEL'S EXHIBIT No. 36

Retail Clerks Union, A. F. L.

Local No. 428

Of Santa Clara County and Menlo Park
347-350 Security Building, 84 South First Street
San Jose 16, California

Telephone: CYpress 3-2020

(Copy)

January 5, 1950.

Reg. Ret. Rec. Req.

Mr. F. J. Kihs, Manager,
W. T. Grant Company,
146 South First Street,
San Jose, California.

Dear Sir:

This is to officially advise you that the Retail Clerks Union, Local 428, has been designated as the collective bargaining representative of the majority of the employees of your store. As such, this Union is the legally authorized agent of your employees with whom all matters of wages, hours and working conditions must be negotiated.

Accordingly, it is our desire to meet with you at your earliest convenience for the purpose of negotiating a collective bargaining agreement covering the employees whom we represent in your store.

(Testimony of James P. McLoughlin.)

An acknowledgment of this communication is hereby requested, together with an indication from you as to when the collective bargaining negotiations can commence.

Very truly yours,

RETAIL CLERKS UNION,
LOCAL 428, AFL,

/s/ JAMES P. McLOUGHLIN,
Secretary-Treasurer.

Received in evidence Nov. 13, 1950.

GENERAL COUNSEL'S EXHIBIT No. 37

W. T. Grant Company
1441 Broadway, New York 18, N. Y.

January 9, 1950.

Retail Clerks Union, A. F. of L.,
347 Security Building,
84 South First Street,
San Jose 16, California.

Attention: Mr. James P. McLoughlin,
Secretary-Treasurer

Gentlemen:

Your letter addressed to Mr. Kihs has been referred to this office.

I have been called to Florida on business and have made arrangements to leave here on Friday, the

(Testimony of James P. McLoughlin.)

13th. I expect to return on the 20th, whereupon I will send you a telegram suggesting a date for a meeting.

Very truly yours,

W. T. GRANT COMPANY,

/s/ E. M. FOLEY.

EMF/ad

Received in evidence Nov. 13, 1950.

GENERAL COUNSEL'S EXHIBIT No. 38

[Western Union Telegram]

1950 Jan 20 PM 2 55

.OA386 SSB323

O.VJA073 DL PD—SI New York NY 20 432P

James P. McLoughlin Retail Clerks Union
84 South First St San Jose Calif (MSRTE)

Am Up to My Neck With Work but Will Meet
You Some Day Next Week if Your Schedule Per-
mits. Please Advise.

EUGENE M FOLEY.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 43

Twentieth Region

821 Market Street

San Francisco 3, California

February 1, 1950.

Air Mail.

Mr. Eugene M. Foley,
W. T. Grant Company,
1441 Broadway,
New York 18, New York.

Re: W. T. Grant Company
Case No. 20-RC-780

Dear Mr. Foley:

Enclosed you will find the original and one copy of a Consent Election Agreement form such as I discussed with you this morning by telephone. The form has been completely filled out simply to demonstrate our usual practice in these cases. If ultimately your Company determines that the proper way to resolve the question of representation raised by the Retail Clerks' petition is to proceed to a consent election, you may either sign the original of the Consent Election Agreement form enclosed and return it to us or prepare one like it by using different dates. Several blank forms have been enclosed for your convenience.

If the latter plan is adopted, we would ask you to allow approximately two weeks between the eligibility period and the date of the election. The

(Testimony of James P. McLoughlin.)

eligibility period is always the last day of a work week, which we understand in the San Jose store is Thursday. Any alterations that the Company might wish to make in Item 12 to conform that section to the facts will be quite satisfactory.

To save time we have also included two interstate commerce data forms, one of which you may return to us with a classified pay roll for a recent pay roll period. You understand this is necessary in order that we may check the showing submitted by the Retail Clerks with their petition.

In the event the Company determines to proceed to a formal hearing, will you please inform us of that decision as soon as possible and indicate to us the issues to be resolved at the hearing?

Thank you for your courtesy this morning and your cooperation in this matter.

Very truly yours,

JOHN H. IMMEL, JR.,

Field Examiner.

Enclosures

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 44

W. T. Grant Company

1441 Broadway, New York 18, N. Y.

February 10, 1950.

Mr. Gerald A. Brown,
Regional Director,
National Labor Relations Board,
821 Market Street,
San Francisco 3, California.
Attention: Mr. John H. Immel, Jr.

Re: Case No. 20-RC-780

Gentlemen:

Unfortunately your letter of the 31st ult. reached me just as I was leaving for Tampa where an election was held in Case No. 10-RC-838. I have just returned and have had our Executive Vice-President sign the form you sent us. Obviously it is not intended for a retail store, but anyway we conceded, in answering question 15, that our Company is subject to the National Labor Relations Act.

Mr. Kihs, our store Manager, hasn't yet sent me a list of the employees, but I will phone him later today and request that he furnish the list so that you will be able to check the union cards.

Very truly yours,

W. T. GRANT COMPANY,

/s/ E. M. FOLEY.

EMF/ad

enc.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 47

821 Market Street
San Francisco 3, California

February 16, 1950.

Mr. Eugene M. Foley,
W. T. Grant Company,
1441 Broadway,
New York 18, New York.

Re: W. T. Grant Company
Case No. 20-RC-780

Dear Sir:

We advised you by wire today that the hearing in the above-entitled case will be postponed to March 3, 1950.

The matter was originally set on relatively short notice inasmuch as we anticipated that a local representative would appear for the Company. It was also our thought that since the case appears to present no fundamental issues which need be resolved by the Board, it might be possible to obtain a Consent Election Agreement. Mr. Immel has already written you enclosing copies of a proposed Consent Election Agreement in his letter of February 1, 1950. Although one letter has been received from you since that time, we as yet have no definite indication from you as to why such procedure should be unacceptable.

An examination of the file would indicate that there is only one union involved, that the Company

(Testimony of James P. McLoughlin.)

has declined to grant it recognition until certified by this agency, that the Company concedes the Board's jurisdiction, and that there is apparently no disagreement with respect to the appropriate unit. Under the circumstances it would seem that a Consent Election Agreement would be an appropriate method for resolving the issues raised by the petition. We urge that you give this serious consideration and advise us by return airmail whether or not the agreement we submitted is acceptable or, in the event it is not, forward us any suggestions you might have. We feel confident that you, as the labor relations representative of a large organization, will agree that expeditious resolution of matters such as this is desirable.

We hope to hear from you at an early date and trust that you will find it possible to enter into an arrangement which will avoid any further delay and inconvenience to any of us.

Very truly yours,

GERALD A. BROWN,
Regional Director.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 50

W. T. Grant Company
1441 Broadway, New York 18, N. Y.

February 20, 1950.

Air Mail.

Gerald A. Brown, Esq.,
Regional Director,
National Labor Relations Board,
821 Market Street,
San Francisco 3, California.

Re: Case No. 20-RC-780

Dear Sir:

I have your letter of the 16th inst.

I note that the hearing is to be held on March 3, 1950, at 10:00 a.m., in Room 634, Pacific Building, 821 Market Street, San Francisco. I will be present at that time; for the agreement which Mr. Immel forwarded to us is not acceptable. You may be sure, however, that I will do everything not inconsistent with our Company policy that will tend to avoid delay and inconvenience.

Very truly yours,

W. T. GRANT COMPANY,

/s/ E. M. FOLEY.

EMF/ad

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

Mr. Kennedy: I will now offer General Counsel's Exhibits 15 through 35 for identification in evidence. [27]

* * *

Trial Examiner Spencer: The cards are received as offered. [28]

* * *

GENERAL COUNSEL'S EXHIBIT No. 15

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Maxine Rakestraw.

Street or Box No.: 30 S. 10th.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ MAXINE RAKESTRAW.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 16

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Omera Guillory.

Street or Box No.: 139 N. 6th.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ OMER A GUILLORY.

(Date of Signing): Jan. 6, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 17

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Betty Jean Beardsley (Miss).

Street or Box No.: Rt. 3 Box 726.

City: Los Gatos.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ BETTY JEAN BEARDSLEY.

(Date of Signing): January 6, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 18

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Martha Nix.

Street or Box No.: Rt. 6 Box 350.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ MARTHA NIX.

(Date of Signing): Jan. 6, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 19

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Adeline Loewen.

Street or Box No.: 505 Page.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ ADELINE LOEWEN.

(Date of Signing): January 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 20

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Evelyn M. De Janvier.

Street or Box No.: Rt 3 Box 818.

City: Los Gatos.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ EVELYN M. De JANVIER.

(Date of Signing): January 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 21

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Nellie Marie Putney.

Street or Box No.: 4 Selo Drive.

City: Sunnyvale.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ NELLIE MARIE PUTNEY.

(Date of Signing): January 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 22

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Florence Bernal.

Street or Box No.: 1752 Gauadalupe.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ FLORENCE BERNAL.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 23

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Faye Jackson.

Street or Box No.: 373 Stockton.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ FAYE JACKSON.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 24

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Rose M. Pasut.

Street or Box No.: 447 N. 1st.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ ROSE PASUT.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 25

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Ione Williams.

Street or Box No.: 75 Lester.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ IONE WILLIAMS.

(Date of Signing): Jan. 5, 1949.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 26

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Robert E. Ellington.

Street or Box No.: 325 N. 20th.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ ROBERT E. ELLINGTON.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 27

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Betty Devoni.

Street or Box No.: 1279 Palm St.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ BETTY DEVONI.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 28

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Melissa Cook.

Street or Box No.: 2333 Cottle.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ MELISSA COOK.

(Date of Signing): Dec. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 29

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Pearl Nicholson.

Street or Box No.: 64 Stratford Dr.

City: Los Gatos.

Employed by: W. T. Grant Co.

City: San Jose.

MRS. PEARL NICHOLSON.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 30

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Tony Intravia.

Street or Box No.: 919 Palm.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ TONY J. INTRAVIA.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 31

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Marie Joldersma.

Street or Box No.: 444 So. 5th.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

MARIE JOLDERSMA.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 32

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Faye Awood.

Street or Box No.: 1030 E. Santa Clara.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ FAYE AWOOD.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 33

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Angel G. Sanchez.

Street or Box No.: 1001 Spencer.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ ANGEL G. SANCHEZ.

(Date of Signing): Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 34

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Rosamond McAllister.

Street or Box No.: 268 Airport Village.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ ROSAMOND McALLISTER.

(Date of Signing): Jan. 5, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 35

I Hereby Authorize the Retail Clerks Association, Local 428, affiliated with the R.C.I.P.A. and the A. F. of L., to represent me and, in my behalf, to negotiate all agreements as to Hours of Labor, Wages, and other Employment Conditions.

Name: Wanda Wood.

Street or Box No.: 137 Colton Pl.

City: San Jose.

Employed by: W. T. Grant Co.

City: San Jose.

/s/ WANDA WOOD.

(Date of Signing) : Jan. 4, 1950.

Retail Clerks Association, Local 428
Santa Clara County and Menlo Park
84 South First Street
San Jose 16, Calif.

Received in evidence Nov. 13, 1950.

Q. (By Mr. Kennedy) : Now, Mr. McLoughlin, can you recall having a meeting in San Jose in the early part of this year with Mr. Foley and Mr. Kihs?

A. I did, yes.

Q. And was there anyone else present?

A. Vic Lazzaro, the Business Representative of the Union; Mr. Foley, Mr. Kihs, and myself.

(Testimony of James P. McLoughlin.)

Q. Can you place the date of that meeting?

A. It was sometime in the latter part of January or the first part of February, in the Santa Clara Hotel.

Q. And approximately how long did that meeting last?

A. Anywhere from two to two and a half hours, and it was in the afternoon, as I recall.

Q. Now, what was the purpose of this meeting, Mr. McLoughlin?

A. The purpose of the meeting was in response to our letter, first of all notifying the company that we were representing the [29] people and asked to be recognized; several communications were sent back and forth. Mr. Foley arrived in town this particular day, and the purpose of the meeting was to discuss the method of satisfying the company as to the fact that we did represent the employees in the Grant store.

Q. Now, were both you and Mr. Lazzaro acting as spokesmen for the union at this conference?

A. We were, yes.

Q. Can you recall what you advised the representatives of the Grant company with respect to what the Union's proposal or solution was, to settle this representation problem?

A. The proposal that we made to the company was that first of all they recognize us with a cross-check or any other quick procedure; the question of election was brought up by Mr. Foley, he felt that a National Labor Relations Board election

(Testimony of James P. McLoughlin.)

would be necessary; he pointed out that he felt they were in commerce, the number of stores they had, and so forth. We discussed that for some time. We proposed a State Conciliation Service election which is handled by the State of California, can be handled in a couple of days, and we pointed out the Board procedure was a little bit long, that we didn't feel it was necessary because we represented the people and we felt that any needless delays should be dispensed with.

Q. Now, during this meeting would you say that Mr. Foley was the main spokesman for the Grant Company? [30]

A. Yes, Mr. Foley was.

Q. And do you recall what Mr. Foley's response was to your general proposal as you have just outlined it?

A. Well, Mr. Foley felt that the best thing to do was to get the rules of procedure; he has Mr. Kihs, the Store Manager, go back to the store and bring the company manual where we could read the national policy of W. T. Grant to ourselves, so that we would have a thorough knowledge as to who we were dealing with, and so forth.

Q. And did Mr. Kihs procure such a manual?

A. Yes, he did, and we then discussed the manual.

Q. Now, what portion of the manual were you referred to, if any, when Mr. Kihs produced it?

A. The one pertaining to the necessity of the National Labor Board election for representation purposes, as set forth in their manual, leaving them

(Testimony of James P. McLoughlin.)

no alternative, and they wanted to abide by it, as they explained to us. [31]

* * *

Q. All right; now, was there any agreement by either you or Mr. Lazzaro to process this representation matter through the National Labor Relations Board?

A. There was not, at the meeting. We felt that our proposal for a check-off or a conciliation service election would be [32] sufficient. However, Mr. Foley again insisted upon a National Labor Relations Board election, felt that it could be done very speedily if we would agree to it, that the consent petition could be sent to New York by air mail and within a matter of a couple of days all our delays could be over with and we shouldn't have any trouble. We told him, well, we would think about it and we would let him know, or we would go ahead and file for an election.

Trial Examiner Spencer: You would go ahead and file for an election?

The Witness: Yes, with the National Labor Relations Board.

Q. (By Mr. Kennedy): Do you recall at what stage of the meeting this statement of Mr. Foley was made about—that you have just described?

A. It was at the end of the meeting, and then as we were departing, in the lobby of the hotel, we again discussed it and again Mr. Foley felt that we could hurry up and get it over with and file for an election.

(Testimony of James P. McLoughlin.)

Q. Now, so that the record will be as clear as possible, will you state, Mr. McLoughlin, the words of Mr. Foley with respect to the NLRB petition, as close as possible, right now?

A. The final parting words, as I recall them, were that if we would file for a National Labor Relations Board election that the petition for consent agreement could be transmitted to New York by air mail, it wouldn't necessitate an additional meeting, that everything would be fine, and we could go ahead and have [33] the election within a week or two period without any difficulty.

* * *

Q. Now, subsequent to this meeting, Mr. McLoughlin, was there a petition filed by your union for the employees at the Grant store in San Jose?

A. Yes, we discussed it among ourselves and with some of the people at the store, realizing that there wasn't any other position [34] to take with this national concern other than to have an election of this kind, and we did file for an election with the National Labor Relations Board.

Q. Do you recall the date of that petition?

A. No, offhand, I do not.

Q. I now hand you a document purporting to be a copy of a representation petition and ask you if you will examine that and see if that refreshes your memory with respect to the date on which it was filed?

A. Yes, this is it, January 31.

Q. Now, subsequent to the filing of this petition,

(Testimony of James P. McLoughlin.)

was there a formal hearing held in this matter, Mr. McLoughlin? A. Yes, there was.

Q. Do you recall the date of that hearing?

A. No, I wasn't in the meeting, the formal meeting, this formal hearing; I wasn't there when that was held. It was in San Francisco, and Vic Lazaro represented our Union as well as the attorney.

Q. Subsequent to this hearing did the National Labor Relations Board direct a hearing in the Grant Store in San Jose?

A. Yes, they did. [35]

* * *

Q. (By Mr. Kennedy): Mr. McLoughlin, I hand you General Counsel's Exhibit 51 for identification and ask you whether or not this was the certificate of direction of election in the matter of the hearing in the San Jose Grant store which was directed on the date indicated thereon?

A. Yes, this is the notification.

Q. Can you also state whether or not the Grant Company involved in this representation proceeding is the same company that is presently involved in this unfair labor practice proceeding?

A. It is, yes.

Mr. Kennedy: I will offer in evidence General Counsel's Exhibit 51 for identification.

Trial Examiner Spencer: Objections?

Mr. Foley: No objections.

Trial Examiner Spencer: It will be received.

* * *

(Testimony of James P. McLoughlin.)

GENERAL COUNSEL'S EXHIBIT No. 51

Form NLRB-1415

United States of America
Before the National Labor Relations Board
Case No. 20-RC-780

In the Matter of:

W. T. GRANT COMPANY,

Employer,

and

RETAIL CLERKS UNION, LOCAL 428, Affiliated With RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. OF L.,
Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

(Testimony of James P. McLoughlin.)

2. The labor organization(s) named below claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees at its San Jose, California, retail store, excluding supervisors.¹

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Section 203.61 and 203.62 of the National Labor Relations Board's Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Elec-

¹The parties agree and we find, that the store manager, assistant store manager, and floorman are supervisors within the meaning of the Act.

(Testimony of James P. McLoughlin.)

tion, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether (or not) they desire to be represented, for purposes of collective bargaining, by Retail Clerks Union, Local 428, affiliated with Retail Clerks International Association, A. F. of L.

Signed at Washington, D. C., this 4th day of April, 1950.

PAUL M. HERZOG,

Chairman,

JOHN M. HOUSTON,

Member,

PAUL L. STYLES,

Member,

[Seal]

NATIONAL LABOR

RELATIONS BOARD.

Received in evidence Nov. 13, 1950.

Q. (By Mr. Kennedy): Now, subsequent to the receipt of that Board order and direction of election, Mr. McLoughlin, on behalf of the union did you take any further action with respect to [36] the direct election?

(Testimony of James P. McLoughlin.)

A. We, of course, were anxious to get the election as rapidly as we could, and to arrange for the dates, and so forth.

Q. Well, specifically, was this election ever held?

A. No, it was not. [37]

* * *

Q. (By Mr. Kennedy): Now, subsequent to your filing this representation petition, Mr. McLoughlin, were you notified that a consent election agreement proposal had been forwarded to Mr. Foley?

A. Yes, I was notified.

Q. Do you remember how long after the petition was filed you were so notified?

A. I don't recall; it was, well, several days later when I was informed that a consent election wasn't satisfactory, which was a shock to me.

Trial Examiner Spencer: Strike "which was a shock to me."

* * *

Q. (By Mr. Kennedy): Mr. McLoughlin, is there, in the retail stores in this area, a commonly understood and expressed practice [41] and desire on the part of the employees in such stores relative to their preference to working a 40-hour 6-day week, or a 40-hour 5-day week?

A. All of our agreements—

Q. Excuse me; I think the answer called for is a relatively brief one, if you will bear in mind my question.

A. The retail people desire the 5-day week.

Q. And you say there is such a commonly un-

(Testimony of James P. McLoughlin.)

derstood practice and desire on the part of the people that you represent?

A. Yes, there is.

Q. And would you state what it is, please?

Mr. Foley: I think he has answered the question, hasn't he?

Mr. Kennedy: Well, he hasn't given you an opportunity to object.

The Witness: Our people desire and enjoy the 40-hour 5-day week. [42]

* * *

Cross-Examination

By Mr. Foley: [43]

* * *

Q. Did I tell you that I had just come back from negotiating a contract in Tampa?

A. You mentioned about being in Florida and one of your wires made reference to a trip in Florida, but I don't know anything——

Q. And did I tell you that I had agreed to a check-off of dues list?

A. No. You didn't mention that at all; I don't remember it.

Q. Now, you said you took steps after receipt of the direction of elections to accelerate the date of the election; will you tell us what steps you took?

A. To discuss the dates and so forth with the Board and to clear our own timing as far as the availability of our own dates were concerned.

(Testimony of James P. McLoughlin.)

Q. Well, the election, may I remind you, was directed for the 30th day after the decision. Did you have any hand in having it delayed until the 30th day?

A. I don't know what you have reference to.

Q. Well, the decision was dated April 4th and the election was to be held on the 3rd; that's a lapse of 29 or 30 days.

A. Well, that was the agreeable day.

Q. That was an agreeable date to the Union?

A. As well as to the employer, is what I understood.

Q. Well, you have no knowledge of the employer's even being [46] consulted about the date of the election, have you?

A. No, except it was going to be held on Thursday, or some time in there; that seemed to be an agreeable day, as far as the number of people being on the payroll is concerned.

Q. Well, as a matter of fact, May 3rd was on a Tuesday, wasn't it?

A. I'd have to look at a calendar.

Trial Examiner Spencer: Does the Board's decision on the election, which you have offered in evidence, bear a date, Mr. Kennedy?

Mr. Kennedy: It bears the date of the 4th of April, 1950.

Trial Examiner Spencer: Thank you. [47]

* * *

Q. There is an Employers Council in this community, isn't there, or this County?

(Testimony of James P. McLoughlin.)

A. Yes, there is.

Q. And you will have to lead me on this, I don't know: Is it constituted for the purpose of exchanging information between employers as to wage conditions, and the like?

A. I wouldn't know what their function is, no.

Q. Well, you know it is customary for merchants to try to keep their prices in line with other merchants, don't you? A. Yes.

Q. And their wage conditions in line?

A. Well, I don't know whether they do it [48] or not.

Q. Well, they try to, don't they—you know that.

A. Yes.

Q. The Kress store is in close proximity to the Grant store, isn't it? A. Yes, it is.

Q. You spoke of wage increases being given by the employer here, the Respondent; do you know whether any of these wage increases went beyond bringing the wages in Grant's up to the level of the wages in Kress?

Mr. McTernan: I may have an objection, Mr. Examiner, to this line of questioning, as incompetent, irrelevant, and immaterial, as far as I can see. It is directed, apparently toward the statements Mr. McLoughlin made on direct examination as to the reasons of his withdrawing of the petition, so that the cross-examination with reference to wages, Kress' or anywhere else, has nothing to do with that; secondly, wage scales in other stores have, as I can see, no connection at all with the

(Testimony of James P. McLoughlin.)

unilateral grant of a wage increase by this employer.

Trial Examiner Spencer: I am inclined to think that it's a waste of time to cross-examine this witness extensively on the reasons that he gave for withdrawing the petition; the only—some of that material came in over my feeling that it wasn't proper to put it in, and I am now going to strike all of the answers given by this witness to questions regarding his reasons for withdrawing from the election. I think that we will just spend a lot [49] of time here; it doesn't establish anything.

Mr. Foley: That's all. [50]

* * *

Trial Examiner Spencer: The hearing will be in order.

This meeting that you testified that you had with Mr. Foley and the Store Manager, which you testified occurred in the latter part of January or early February, 1950, I wonder if counsel could stipulate the date of that meeting?

Mr. Foley: January 25, 1950.

Mr. Kennedy: We will so stipulate.

Trial Examiner Spencer: Very well. [52]

* * *

Trial Examiner Spencer: If you will excuse me, Mr. Kennedy, there may still be a little confusion there.

Mr. McLoughlin, did you specifically at that meeting offer the company to settle the question of

(Testimony of James P. McLoughlin.)

majority by checking your cards against the payroll; did you make that specific offer?

The Witness: Yes.

Mr. Foley: To me?

The Witness: Yes.

Mr. Foley: What was my response?

The Witness: To the question of the procedure of the company—I recall you saying at one time, Mr. Foley, that you didn't like—that you weren't a coward, but you wanted us to read it for ourselves as to just what we had to do.

Mr. Foley: That's right. And as a matter of fact, everything that was said by the company was said in print, you read it in the manual.

The Witness: Well, I am not familiar with whether or not that loose-leaf there is the same one that you had in the hotel in January, but you did have a manual that appeared to be of that variety.

Mr. Foley: But you read it, and it said so in there.

The Witness: Right.

Mr. Foley: In other words, there wasn't any oral conversation [57] as to what the company would require, what the company's feelings were; it was in print.

The Witness: It was.

* * *

VICTOR J. LAZZARO

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

Q. State your name, address and occupation for the record.

A. Victor J. Lazzaro, 27 Sunnyslope Avenue, San Jose; employed as a Business Representative for the Retail Clerks Union, Local 428, AFL. [58]

Q. I am going to ask if you will, please, speak just a little bit louder.

Directing your attention to the early part of 1950, will you state whether or not before January 25th you had any contact with Mr. Kihs, who is the Manager of the Grant store in San Jose?

A. Yes, I did.

Q. And will you state what that was, please?

A. I paid a visit to Mr. Kihs in the San Jose Grant store following the letter asking the company for recognition. The conversation was very simple; I merely stated to him that I represented the Retail Clerks Union, who had sent him this letter asking for recognition, that we feel that a majority of the people had designated us as their collective bargaining representative, and therefore we feel that we have a right to come into this store and speak

(Testimony of Victor J. Lazzaro.)

to people, the employees of the company, about the Union, call a meeting, and such. [59]

* * *

Q. (By Mr. Kennedy): All right, now, did you go into the store after this meeting of January 25?

A. Yes.

Q. Will you tell us what happened then?

A. I went into the store to ask the employees of the store to attend a meeting, not by verbal methods, but by handing them a post card, which asked the people to attend the meeting at a given time and place and date, and at that time representatives of the firm, variously, Mr. Burton, the Assistant Manager; Mr. Kihs, Manager; Mrs. Kleidon, Assistant, also, I believe, followed [60] me around the store as I tendered a card to the various employees to attend the meeting.

Q. Could you describe how closely you were followed?

A. I would say within a foot or two, as close as anyone could be to a person. [61]

* * *

Q. Now, with reference to the January 25 meeting, Mr. Lazzaro, would you state what took place there, particularly with respect to the statements made by the Union representatives and the representatives of the company concerning this question of representation?

A. I was in the discussion that took place in the room in the Hotel Sainte Claire on the 25th of January, at which time we did offer alternatives

(Testimony of Victor J. Lazzaro.)

to an NLRB election, and each of the alternatives was denied the Union by Mr. Foley, sometimes in direct language and other times by reference; and the time that I refer to by reference is when he asked the Store Manager to go to the store and obtain the store manual and bring same back so that we [62] might read its contents in the labor relations section of the manual—the company provides the Store Managers, as I understand it.

Q. Now, in short, it was the company's position that a certification by the National Labor Relations Board was required prior to recognition, is that correct? A. That's right.

Q. And at that meeting you and Mr. McLoughlin advanced the idea that alternative methods to determine a majority would be preferential from your standpoint, is that right? A. Yes, sir.

Q. Now, before the meeting closed, what was said by either you or Mr. McLoughlin with respect to filing a petition with the National Labor Relations Board, if anything?

A. All that was said seemed to point to a simplification of obtaining an election, and that though I may be far away, Mr. Foley indicated that we can get letters back and forth quickly by air mail or by wire.

Q. Excuse me, Mr. Lazzaro, I am going to ask you to listen to the question I am going to ask you, again, please: Do you recall whether anything was said by you or Mr. McLoughlin as to whether or not the Union would file a petition with the National

(Testimony of Victor J. Lazzaro.)

Labor Relations Board, and if anything at all was said on the subject, what was it, if you recall?

A. We were asked to file with the Board, and that the agreement [63] on the part of the company could be made hastily in answer to wires or letters, air mail.

* * *

Trial Examiner Spencer: Now, the question is, the question didn't go to your opinion; the question went to what you did at this meeting: Did you agree to file the petition, or didn't you?

The Witness: We agreed finally, yes. [64]

* * *

Q. (By Mr. Kennedy): Mr. Lazzaro, I show you General Counsel's 52 for identification and ask you to examine it and state whether or not you are the Victor J. Lazzaro listed in such as appearing for the Union involved? A. Yes.

Q. Have you had an occasion to examine that transcript and determine whether or not it is an accurate record of the proceedings at which you were in attendance as one of the parties?

A. Yes, I have had a look at it.

Mr. Kennedy: I will now offer in evidence General Counsel's Exhibit 52 for identification, a copy of the transcript of the case I have just mentioned.

Mr. Foley: No objection.

Trial Examiner Spencer: It is received, but I would like to know your purpose, Mr. Kennedy, so I will know what I am called on to do with reference to this exhibit.

(Testimony of Victor J. Lazzaro.)

Mr. Kennedy: Yes; the theory of the General Counsel with the course of conduct of the Respondent is exemplified by many of the exhibits which have been introduced, taken together with the incidents which we contend occurred at the store during the [66] interval between the original request for recognition and the present date, reflect a determination on the part of the Respondent to preclude the employees having a free and unfettered choice of their collective bargaining agent; and specifically with respect to this transcript, we contend that it will reflect that there were no issues which required the hearing, and was utilized by the Respondent as a device to gain time in defeating the ends of the employees.

Trial Examiner Spencer: In the R-case, in other words, there was no dispute as to unit, no dispute as to the employees covered?

Mr. Kennedy: That is correct.

Trial Examiner Spencer: In effect, it was a stipulated set of facts in the R-case?

Mr. Kennedy: In effect.

Mr. Foley: Would you hear me on that, Mr. Examiner?

Trial Examiner Spencer: Yes. I just don't want to proceed with the exhibits unless I know what I am supposed to do with them.

Mr. Foley: Now, in that case, the Respondent made known its position, and I stated before, the Respondent operates 495 stores throughout the United States, and whenever there has been a ques-

(Testimony of Victor J. Lazzaro.)

tion of a unit, the Respondent has uniformly taken the position that there is one unit and it consists of the entire store, whether the store has a luncheon department—which this store [67] has not, but some of them have—that the luncheonette employees should be included in the unit, and at all events office employees are to be included in the unit. There was some discussion between Mr. Lazzaro, Mr. McLoughlin, and myself on January 25—and since I am not testifying, I shall not say what the discussion was.

Mr. Kennedy: I have no objection, if you want to incorporate it in your argument.

Mr. Foley: But Mr. McLoughlin stated during the course of this discussion that “well, it’s been customary to give the office employees to the office workers union,” and we talked about that and I told him about our uniform practice of making one unit for the entire store, that we wanted to deal with one union and not several unions. I knew it was customary, as I said right here in the minutes, that our position has never been—and I am proud it has never been—we want the office workers in when the union wants them out, or we want them out when the union wants them in. We have taken one stand, and during the course of this thing a decision came down in the case of Mass Brothers, a department store in Tampa, Florida, where the employees were divided up into several unions and the Board took the position that: “Well, there are some unions here, and we will divide it, too.” In

(Testimony of Victor J. Lazzaro.)

the brief I filed with the Board in this representation case, I said that I don't think the unit is to vary, from time to time, depending on the wishes of the union, [68] and I wanted to create in Washington a record of uniformity.

There was a question of whether I could write to the Executive Secretary, I think, about extra time to file briefs, and I said, "No, I don't want any extra time."

As a matter of fact, before this proceeding is over I will submit application by the Petitioner here for extra time to file briefs beyond the time during which my brief was filed.

In fact, the application for the extra time was after my brief was filed. I will submit that later.

Trial Examiner Spencer: Well, in this representation proceeding there was agreement on the unit, is that correct?

Mr. Foley: In effect, excepting there was a clarification, during the course of the proceeding, a little misnomer here and there; we straightened it [69] out.

* * *

Trial Examiner Spencer: I understood there was no dispute in this proceeding as to the appropriate unit.

Mr. Foley: None now; there was then, [71] though.

* * *

(Testimony of Victor J. Lazzaro.)

GENERAL COUNSEL'S EXHIBIT No. 52

Official Report of Proceedings
Before the
National Labor Relations Board
Case No. 20-RC-780

In the Matter of:

W. T. GRANT COMPANY,

and

RETAIL CLERKS UNION, LOCAL 428, Affili-
ated With RETAIL CLERKS INTERNA-
TIONAL ASSOCIATION, A. F. OF L.

Place: San Francisco, California.

Date: March 3, 1950.

Mr. McTernan: May I ask Mr. Foley, as long as we are having these long discussions about Company principle, I would like to ask one question for the record: Does the Company principles, these principles you mentioned, preclude the Company from entering into an agreement or a consent election when there are no issues involved in the representation proceeding?

Mr. Foley: Yes, yes.

* * *

Received in evidence Nov. 13, 1950.

Mr. Kennedy: Now, Mr. Examiner, I would like to offer in [72] evidence, General Counsel's 53 for

(Testimony of Victor J. Lazzaro.)

identification, which purports to be a copy of the original representation petition filed on January 31, 1950.

Trial Examiner Spencer: Mr. Foley, stipulated that is a copy?

Mr. Foley: Yes, sir.

Trial Examiner Spencer: All right, do you object to receiving it?

Mr. Foley: I do not, no, sir.

Trial Examiner Spencer: It is received.

* * *

GENERAL COUNSEL'S EXHIBIT No. 53

United States of America

National Labor Relations Board

Form NLRB-502

PETITION

Important—Read Carefully

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

(Testimony of Victor J. Lazzaro.)

If more space is required for any one item, attach additional sheets, numbering item accordingly.

Attachments Required.—Except when this Petition is filed by an employer under Section 9 (c) (1) (B) of the act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

Do Not Write in This Space

Case No. 20-RC-780.

Date Filed: 1/31/50.

Compliance Status Checked By: es.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition (Check only the one box which is appropriate)

A. ☒ RC—Certification of Representatives (Individual, Group, Labor Organization).—
A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to Section 9 (a) and (c) of the act.

(Testimony of Victor J. Lazzaro.)

- B. ☐ RM—Representation (Employer). — One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in Section 9 (a) of the act.
- C. ☐ RD—Decertification.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in Section 9 (a) of the act.
- D. ☐ UA—Union Shop Authority.—(If employer consents to union shop election, use Form NLRB-510 instead of this Form NLRB-502.) Petitioner is the representative of employees as provided in Section 9 (a) of the act and 30 per cent or more of employees within a unit appropriate for such purposes desire to authorize Petitioner to make an agreement with their employer requiring membership in Petitioner as a condition of continued employment.
- E. ☐ UD—Withdrawal of Union Shop Authority.—Thirty per cent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8 (a) (3) (ii) of

(Testimony of Victor J. Lazzaro.)

the act desire that such authority be rescinded.

2. Name of Employer: W. T. Grant Company.

3. Address(es) of Establishment(s) Involved (Street and number, city, zone, and State) 146 South First Street, San Jose, California. Head Office: 1441 Bdwy. New York 18, N. Y.

4. Nature of Employer's Business: Retail Variety Store.

5. Description of Unit Involved:

Included: All employees employed at above establishment, except Store Manager, Assistant Store Manager, and Trainees.

6a. Number of Employees in Unit: 34.

6b. Number of Employees Supporting this Petition: 22.

(If you have checked box 1A (RC) above, check and complete Either item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on January 5, 1950, and Employer declined recognition on or about January 22, 1950. (If no reply received, so state.)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

(Testimony of Victor J. Lazzaro.)

8. Recognized or Certified Bargaining Agent (If there is none, so state): Name: None.

9. Date of Expiration of Current Contract, if any: None.

(Fill in Item 10 Only if You Have Checked Box 1E (UD) Above.)

10. Date of Election by Which Union Shop Authority Was Granted:

11. Parties or Organizations Which Have Claimed Recognition as Representatives: Name: Retail Clerks Union, Local 428 (Retail Clerks International Association). Affiliation: A.F.L. Address: San Jose, California, 84 So. First Street. Date of Claim: Jan. 5, 1950.

12. Other Unions Interested in the Employees Described in Item 5 above (If none, so state) Name: None.

13. Declaration: I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

RETAIL CLERKS UNION,
LOCAL 428,
Petitioner.

Affiliation, if any: Retail Clerks International Association, A. F. of L.

(Testimony of Victor J. Lazzaro.)

Signature of representative or person filing
petition:

By /s/ JAMES P. McLOUGHLIN,
Secretary-Treasurer.

Address: 84 South First Street, San Jose, Calif.

Telephone number: CYpress 2020.

Willfully False Statement on this Petition Can
Be Punished by Fine and Imprisonment (U. S.
Code, Title 18, Section 80.)

Received in evidence Nov. 13, 1950.

Cross-Examination

By Mr. Foley: [74]

Q. On March 3, 1950, at San Francisco, in the
NLRB office, did you meet Mr. Kihs in connection
with the representation hearing?

A. Was that the date that the hearing was held?

Q. Yes. A. I saw Mr. Kihs.

Q. Did you tell him that the store had adopted a
five-day week in order to lick the union, or words
to that effect? [75]

A. I may have; I don't recall.

Q. You were pretty close to these girls who
signed cards, weren't you?

A. You mean am I married to them?

Q. No, I mean they had your confidence, didn't
they? In connection with wages and hours and
working conditions?

(Testimony of Victor J. Lazzaro.)

Mr. Kennedy: Object, Mr. Examiner.

Mr. McTernan: I don't see the materiality.

Trial Examiner Spencer: Could you give me a clue as to your preference there?

Mr. Foley: I want to bring out whether the witness knew that a five-day week was in effect in that store long before March 3rd.

Trial Examiner Spencer: Your question goes to the matter of the five-day week?

Mr. Foley: That's right.

Trial Examiner Spencer: He may answer.

Were you close to the girls, did you know them well?

The Witness: I knew them; I met with them at meetings; I spoke to them and with them.

Q. (By Mr. Foley): Did you know that Helen Simpson worked five days a week since 1943?

A. I didn't know Helen Simpson.

Q. Did you know that Alma Harrison worked five days a week since 1944? [76]

A. I didn't know Alma Harrison.

Q. Did you know that Ann Sunseri worked five days a week since June, 1945?

A. I don't recall the name, Mr. Foley.

Q. Eleanor Rose, did she work five days a week since November, 1945?

A. I didn't know her.

Q. Mary Covell worked five days a week since March, 1946?

A. The name is unfamiliar to me.

(Testimony of Victor J. Lazzaro.)

Q. Adeline Lowewen worked five days a week since November of 1946.

A. I didn't know that; I know her.

Q. You have her card there. Grace Sellers worked five days a week since December, 1946?

A. I didn't know that.

Q. Caroline Silva worked five days a week since September of 1947; namely, the date of her employment.

A. Are you testifying, Mr. Foley, or are you asking me?

Q. No, I am wondering whether you knew that.

A. I didn't.

Q. You did not.

A. I did not. I have the general knowledge that a few girls, a very few, had the five-day week.

Q. You would base your familiarity with working conditions on the statement you have just made, that very few out of the [77] store had a five-day week? A. To my knowledge.

Q. Did you know that some of the employees in that store prefer six days—six short days, rather than five 8-hour days?

A. Such a discussion was never had by me and the girls.

Q. Did you know, for example, that when Mrs. Guillory—and you have one of her cards there—was employed, she asked for a six-day week?

A. No, sir; the Manager didn't tell me those things.

Q. The Manager didn't tell you? A. No.

Q. And that Mrs. Guillory later asked for a

(Testimony of Victor J. Lazzaro.)

five-day week before the petition was filed, and was put on the five-day week?

A. I don't know.

* * *

Q. You know Mrs. Guillory, don't you? [78]

A. I know the name, but I don't remember the woman.

Q. Do you remember visiting Mrs. Guillory's house and assuring her that her husband would not be beaten up if she didn't join your union?

A. Never had any talk with anyone about anybody else getting beaten up.

Q. You didn't go to her house and talk to her, or anything like that?

A. What does her husband do?

Q. He is a carpenter.

A. I don't remember—I recollect very hazily speaking to her at her home and asking her to join the union, and assuring her that it was a good thing, that we thought that combined we could achieve the things that all the people in the store wanted, the five day week—— [79]

* * *

Q. (By Mr. Foley): Did you ever state to any of the Grant employees in the months of March or April, 1950, that no matter what management said regarding the operation of a closed shop—an open shop, rather—if the union won the election the store would be operated as a union shop?

A. I don't remember saying that.

Q. You might have said it?

(Testimony of Victor J. Lazzaro.)

A. I don't think so.

Q. Will you say with certainty that you didn't say it?

A. I will qualify it, if you want an answer.

Q. Go ahead, qualify it.

A. I may have said to the employees no doubt that they could get the union shop if the union won the election with a tremendous majority voting for it, because that would indicate to the company and it would indicate to the public that the people in Grant's store want the union in the majority, without a doubt.

Q. Did you say that despite anything management might say orally or by way of a notice on the bulletin board, if the union won the election—I will insert, if you wish "by an overwhelming vote"—the store would be a union shop?

A. No. Or, will you rephrase the question; I didn't quite understand, the way that you put it. [80]

Q. You knew that management had posted a notice on the bulletin board—or, rather, information came to you that management had posted a notice on the bulletin board to the effect that the people of this store could join the union, or refrain from joining the union, just as they wished?

A. I knew that such a notice had been posted.

Q. And that the store is operated an open shop in the true sense of the word?

A. I think you told us that.

Q. And that it is the company's policy to em-

(Testimony of Victor J. Lazzaro.)

ploy members of unions as well as non-members, and neither is favored over the other in any aspect of employment?

A. You answered that yourself, "the company is an open shop company."

Q. Did any information come to you to the effect that such a notice was posted on the bulletin board?

A. Yes, and there was another notice passed around that——

Q. Mr. Lazzaro, just confine yourself to this notice, please, for the present.

A. I thought I could amplify that——

Trial Examiner Spencer: Just a minute; answer the question first, and then if you want to amplify it, we will see about it then; but in any event, answer the question.

Q. (By Mr. Foley): Now, in connection with the notice on the bulletin board to the effect that the Grant Company employed union [81] members as well as non-union members, and nobody would be required to join the union as a condition of employment, did you say to any employee of W. T. Grant Company that despite either a notice, or anything said orally by the management, if the union won the election overwhelmingly this store will be operated as a union shop?

A. I said it could be.

Q. Not that it would be?

A. I just said it could be.

Q. You didn't say it would be?

(Testimony of Victor J. Lazzaro.)

A. No, I didn't. [82]

Q. (By Mr. Foley): Did you, on or about March 16, 1950, visit the Grant store and hand out notices of a meeting to be held on the 17th of March, 1950?

A. I visited the store some time around that time for that purpose, yes.

Q. Did you spend most of the afternoon of that day in the store?

A. I don't remember how much time I spent in the store.

Q. Did you put one of the notices of meeting on the time clock in the store?

A. I don't remember doing that.

Q. Did you go to Mrs. Pasut and finger her trousers in the men's and boys' department, of which she was in charge, and say that you wanted her to measure you for a pair of trousers?

A. After I distributed my cards I had a shopping list that my wife had given me earlier, and I was shopping for some goods in the store.

Q. Did your wife tell you to buy trousers for yourself? A. Sometimes my wife——

Q. Did she on this occasion?

A. Sometimes she reminds me that I am low on something.

Q. Did she remind you on this occasion?

A. I don't remember that. [83]

Q. Did you buy trousers from Mrs. Pasut?

A. I don't remember doing so.

Q. Did you go to the curtain counter and muss up or upset the display on the counter that day?

(Testimony of Victor J. Lazzaro.)

A. I don't remember upsetting anything, Mr. Foley.

Q. Do you remember going to the curtain counter?

A. I remember going to every department in the store.

Q. Do you remember touching the merchandise on the curtain counter?

A. Not specifically. [84]

* * *

Q. (By Mr. Foley): In connection with your visit to the store on December 16, 1950, Mr. Lazzaro, did you talk to any customers on that occasion?

A. I don't remember visiting the store on November 15th.

Q. March 16th, 1950? A. I may have.

Q. Did you say or announce to customers nearby that "I don't want you to patronize this store; it is unfair to the union." [89]

* * *

The Witness: May I hear the question?

Q. (By Mr. Foley): Did you, on your visit to the store on March 16, 1950, talk to customers?

A. I may have.

Q. Did you announce to any customers, "Don't patronize this store; it's unfair to the union," or words to that effect?

A. I don't remember saying that. [90]

* * *

Q. (By Mr. Foley): As we were parting, Mr.

(Testimony of Victor J. Lazzaro.)

Lazzaro, on January 25th at the Sainte Claire Hotel, did I tell you that I handle all labor relations matters and I would rather you deal with me than through Mr. Kihs, that his job was to operate a store?

A. You may have said that, sir.

Q. And that there wouldn't be any additional time because we could communicate by wire or air mail?

A. You implied that, and said it directly.

Mr. Foley: That's all.

Trial Examiner Spencer: At any time during that January 25th meeting, did Mr. Foley, or did Mr. Kihs any time during that meeting, state that the company would sign a consent election if you filed a petition?

The Witness: Directly, no. [93]

* * *

EVELYN DE JANVIER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

* * *

Q. And were you working at the store prior to Christmas of 1949? [95] A. Yes, sir.

Q. And did you hear at that period that a couple of girls had asked for wage increases and had been refused?

(Testimony of Evelyn De Janvier.)

A. I had been told that a couple of them had asked but were refused.

Mr. Foley: I move to strike that out as hearsay.

Mr. Kennedy: I am not offering it for the truth, but the statement is merely preliminary to another question.

Trial Examiner Spencer: All right, it may stand.

Q. (By Mr. Kennedy): After hearing that, did you contact any of the union officials of the Retail Clerks in San Jose? A. Yes, I did.

Q. And did you subsequently attend a meeting at which other Grant employees were present?

A. Yes, I did; but may I go into that first one a little bit differently?

Q. If you like.

A. The question asked me, if I had contacted the union; the girls in the store, we had talked about it, and they all wanted to go—not all, but the majority of them wanted to go into it, but nobody would go up to the union to see about it, is the reason I went up.

Q. Do I understand your comment correctly, the other girls wanted it as much as you, but you, in their behalf as well as your own, contacted them? [96] A. That's right.

Q. Now, do you recall approximately when the first union meeting was held at which Grant employees came?

A. Offhand, I don't. It was after the first of the year, but I don't remember just when. [97]

(Testimony of Evelyn De Janvier.)

* * *

Q. Now, did you also attend a second union meeting? A. Yes, I did.

Q. And approximately when was that with relation to the first one?

A. I don't have any idea when it comes to dates; I am very poor.

Q. Would you say it was within a period of two or three weeks after the first one?

A. About three weeks.

* * *

Q. Now, do you recall an occasion after this organization started at which there was a meeting in the store at which Mr. Kihs made some statements with respect to hours and wages? Do you remember such a meeting? A. Yes, I do.

Q. Do you have any recollection now, as to the approximate date at which this meeting occurred?

A. No, I don't have any idea what date that was.

Trial Examiner Spencer: Could you state whether it was before or after the second union meeting that you testified about? [98]

The Witness: I do believe it was after the second meeting.

Q. (By Mr. Kennedy): Do you recall getting a wage increase somewhere around the first two or three months of 1950?

A. I believe we got our wage increase the same time that Mr. Kihs told us of our changing from six days to five.

(Testimony of Evelyn De Janvier.)

Q. And that was approximately what period, if you can remember?

A. That was after our second meeting, sometime.

Q. Now, prior to that meeting—strike that.

Do you recall an occasion in 1950 when you took a day off to go fishing? A. Yes.

Q. And do you remember what date that was?

A. The 29th of April.

Q. Now, do you recall on the following Monday that you were showed a letter by Mr. Kihs?

A. Yes, I was. [99]

* * *

Q. Now, what can you recall now about the contents of that letter?

A. As I recall it, it was that the San Jose store would close before it would be unionized; it would take its business elsewhere. [100]

* * *

Q. (By Mr. Kennedy): Merely for the purposes of refreshing your recollection and pointing up my questions, Mr. De Janvier, I am going to hand you a notice which Mr. Foley informs me was posted on the bulletin board and which I accept as being correct, and ask you when you first noticed that such a notice was put on the board?

A. I would say the beginning of February, or sooner; I believe it was in February.

Q. And when is the last time that you noticed it posted on the bulletin board?

A. I believe Friday.

(Testimony of Evelyn De Janvier.)

Q. This last Friday? A. Yes. [101]

* * *

Mr. Kennedy: I will offer it in evidence.

Trial Examiner Spencer: Mr. Foley, you stipulate No. 56 into the record, don't you?

Mr. Foley: Yes, sir.

Trial Examiner Spencer: Very well, received.

* * *

GENERAL COUNSEL'S EXHIBIT No. 56

Notice

There is a rumor that sooner or later you will be required, as a condition of employment, to join a labor union.

There is not a grain of truth in this rumor.

You don't have to join, nor need you refrain from joining any union to work at Grants.

This store is an open shop in the true sense of the word.

It is our policy to employ members of unions as well as non-members and neither is favored over the other in any aspect of employment.

This policy will not be changed.

/s/ F. J. KIHS.

Received in evidence Nov. 13, 1950.

* * *

Q. (By Mr. Kennedy): Mrs. De Janvier, in accordance with Mr. Foley's suggestion, and also, I think it is a good idea myself, I am going to ask

(Testimony of Evelyn De Janvier.)

you to inspect this document bearing date of April 27, 1950, and ask you if your recollection indicates that is the letter that you saw.

Trial Examiner Spencer: In Mr. Kihs' office.

The Witness: That looks and seems to be very much like it, and I can see now where we got our name.

Q. (By Mr. Kennedy): To the best of your recollection, is this the letter?

A. That is it.

Mr. Kennedy: Well, if that is the letter, Mr. Foley, and if you feel that your files can be unburdened of this original, [107] I will offer this in evidence.

Mr. Foley: All right.

Mr. Kennedy: I will ask that it be marked for identification as General Counsel's Exhibit No. 58.

* * *

Trial Examiner Spencer: Received.

* * *

GENERAL COUNSEL'S EXHIBIT No. 58

April 27, 1950.

Mr. F. J. Kihs

#331, San Jose, Calif.

I received your letter this morning, and my inclination was to write to you immediately to the effect that it is settled Company policy that we will not operate a union shop in San Jose or elsewhere. However, in order to make assurance doubly sure, I decided to "check" with Mr. Lustenberger, but

(Testimony of Evelyn De Janvier.)

I wasn't able to reach him until a few minutes ago.

As a result of my conversation with him I think we can take a definite position to the effect that we will not agree to a union shop in San Jose under any circumstances, and further that if we can't do business in San Jose on an open shop basis, we just won't do business in San Jose. I trust that you still have posted the notice to the effect that no one need join the union in order to work in Grant's. If by chance that notice was taken down I suggest you put it up again.

/s/ E. M. FOLEY

EMF/ad

Air Mail

cc: Mr. H. E. Maroney

Mr. J. D. Hardman

Received in evidence Nov. 13, 1950.

Q. (By Mr. Kennedy): I am going to ask you to consider again, if you will, please, Mrs. De Janvier, the occasion on which Mr. Kihs addressed the girls at a meeting in the store, concerning change of work week, and will you tell us whether anything else was said other than what you have already told us?

A. Outside of our changing day and raise in pay, I believe he said that any of the girls that wanted to join the union were free to do so, that we did not have to join the union to work in the

(Testimony of Evelyn De Janvier.)

store, that they would hire either union or non-union alike.

* * *

Q. And did I understand you to say that you got a wage increase about the same time, or shortly after? A. Yes. [109]

* * *

Cross-Examination

By Mr. Foley:

* * *

Q. You and Mrs. Kleidon are very good friends, aren't you? A. Yes, we are.

Q. And you made a statement for the General Counsel, didn't you? A. Yes, I did.

Q. And General Counsel told you you would have to come up to Union headquarters to give a statement? A. That's right.

Q. That the Government required you to go to Union headquarters? A. That's right.

Q. And you told the General Counsel that you were very friendly with Mrs. Kleidon?

A. That's right.

Q. And you also told the General Counsel that you and she kidded around with one another, and fooled around with one another? [111]

A. That's right.

Q. Passed remarks with one another?

A. That's right.

Q. That the General Counsel then told you he didn't want anything like that in the statement, didn't he?

(Testimony of Evelyn De Janvier.)

Trial Examiner Spencer: Mr. Kennedy keeps trying to get in something here.

Mr. Kennedy: I want to object to that as being immaterial and irrelevant.

* * *

Trial Examiner Spencer: Mrs. Kleidon, what is her position, is she a supervisor?

Mr. Foley: Yes, sir; she was a war-time Assistant Manager.

Trial Examiner Spencer: Would she come under the term [112] "supervisor"?

Mr. Foley: Yes, she would.

Q. (By Mr. Foley): Well, Mrs. De Janvier, what were the circumstances under which Mrs. Kleidon spoke to you about the "pretty union button"?

A. Very kiddingly.

* * *

NELLIE PUTNEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

* * *

Q. Do you recall if a wage increase in the early part of this year—

A. Yes.

Q. Can you fix the time by any other events when this rate increase occurred?

A. It must have been just before—well, in the latter part of February.

(Testimony of Nellie Putney.)

Q. And how do you arrive at the fact that it occurred about that time?

A. I went on my vacation February 27th and I got it in the pay check on my vacation.

Q. Now, do you recall whether or not shortly before you went [116] on your vacation there was a meeting in the store at which Mr. Kihs made some remarks about wage increases and five- or six-day week?

A. Yes.

Q. And how long before you went on your vacation did this meeting occur?

A. I would say about a week.

Q. Will you tell us what you remember about what was said at that meeting by Mr. Kihs?

A. Mr. Kihs told us that he had discussed it with the other people in the company and that they had found that the other stores in San Jose were on five-day week and that we should be on five-day week, that we would receive five-day week and a pay increase, and there would be no need for us to join the union unless we felt that we wanted to, we would be an open shop store.

* * *

Q. And when you came back from your vacation, did you wear your union button?

A. Yes, I did.

Q. Was there any remark made to you by anyone concerning your union button at that time?

A. Mrs. Kleidon—just kiddingly, I guess, to keep me from getting embarrassed—asked me if I was the only girl in the [117] store that was in the union—jokingly, you know.

(Testimony of Nellie Putney.)

Q. And what did you say?

A. I didn't know what to say. I just took the button off.

Q. Did you notice at that time that you were the only one in the store with a button?

A. No, I didn't pay any attention.

Q. Did you notice whether or not at that time any of the other girls did have union buttons on?

A. No.

Q. Do you have any explanation as to why Mrs. Kleidon should have asked you that question?

A. Well, knowing me, she felt that if I were the only girl wearing a button I would be embarrassed.

* * *

Q. (By Mr. Kennedy): I am going to show you General Counsel's Exhibit 58, Mrs. Putney, and ask you whether you have ever seen [118] that before?

A. Yes.

Q. And would you state under what circumstances, please?

A. Yes; Mr. Kihs showed the letter to me on a Saturday morning.

* * *

Q. Do you remember at the time you saw that letter whether Mr. [119] Kihs had anything to say?

A. He just asked me who I believed.

* * *

Q. Do you remember noticing anything after Mr. Kihs showed the letter to you?

A. He showed it to Betty Guillory.

Q. And after that did you have a conversation

(Testimony of Nellie Putney.)

with any of the other employees about the contents of that letter? A. Yes, I did.

Q. Would you state—or, I should say, about the contents or the letter itself—is that correct?

A. Yes.

Q. And would you state with whom this conversation occurred? A. Faye Jackson.

Q. And what was it please, the conversation.

A. I asked her what she thought about the letter and if she read it, what she thought about it, and she said if it meant losing our jobs we would just have to forget about the union. [120]

* * *

Q. Now, you know, as a matter of fact, that after Mr. Kihs did mention that there was going to be a wage increase and a change in the work week, that some girls did receive the wage increase and that the working hours were changed from a 40-hour, six-day week to a 40-hour, five-day week?

A. Yes. [121]

* * *

Cross-Examination

By Mr. Foley:

Q. Mrs. Putney, you started with the Grant Company at \$24 a week? A. Yes, I did.

Q. How many hours did you work then?

A. Forty hours, I believe.

Q. Now, at the time of the meeting, where Mr. Kihs announced that everyone would go on a five-day week, you were getting what salary?

A. \$32 a week.

Q. You said that Mr. Kihs announced at that

(Testimony of Nellie Putney.)

meeting that there would be no need to join the union?

A. I guess he didn't say—he said we didn't have to unless we wanted to, we wouldn't be forced to.

Q. Very well; now, you and Mrs. Kleidon are very friendly, are you? A. Yes, we are.

Q. Now, what were the circumstances under which she discussed with you the wearing of your union button?

A. Well, we were on the counter at the foot of the stairs and she put her arms around me and laughed with me, and—you know, joked with me, and asked me if I was the only girl in the union, that she noticed I was still wearing my union [123] button.

Q. That is after you had come back from vacation? A. Yes, the day after I got back.

Q. Were you wearing the same apparel then that you wore before you left on your vacation?

A. Yes.

Q. And you left it at the store, did you?

A. Yes, I did, it was a sweater.

Q. When you put on the sweater were you conscious of the fact that there was a union button on it?

A. Well, I knew it was there; I didn't think anything about it.

Q. Now, when Mr. Kihs showed you the letter, General Counsel's Exhibit No. 58, didn't he say to you, "Now, who do you believe"? A. Yes.

(Testimony of Nellie Putney.)

Mr. Kennedy: Mr. Examiner, I have been furnished by the [124] Respondent, a payroll which includes the week of January 25th with respect to the employees of the San Jose Grant store. I now propose, subject to the concurrence of Mr. Foley, to read into the record the list of employees who were on the payroll as of that date, excluding the supervisory employees.

Mr. Foley: No objection.

Mr. Kennedy: Robert Ellington; Ellington is spelled E-l-l-i-n-g-t-o-n; the next one is Delphie Ferro, F-e-r-r-o; the next one is Alma J. Harrison, H-a-r-r-i-s-o-n; the next one is Tony Intravia, I-n-t-r-a-v-i-a; the next one is Ione H. Williams; Camille Frediani, F-r-e-d-i-a-n-i; Faye Arwood; Florence H. Bernal; B-e-r-n-a-l; Betty J. Beard-sley, B-e-a-r-d-s-l-e-y; Melissa C. Cook, first name is M-e-l-i-s-s-a; Mary A. Covell, C-o-v-e-l-l; Evelyn N. De Janvier, D-e J-a-n-v-i-e-r; Betty Devoni, D-e-v-o-n-i; Omera F. Guillory, G-u-i-l-l-o-r-y; Faye Jackson, J-a-c-k-s-o-n; Adeline Loewen, L-o-e-w-e-n; Rosamond McAllister, M-c-A-l-l-i-s-t-e-r; Pearl A. Nicholson, N-i-c-h-o-l-s-o-n; Martha A. Nix, N-i-x; Rose Ann Pasut, P-a-s-u-t; Nellie M. Putney, P-u-t-n-e-y; Eleanor M. Rose, R-o-s-e; Maxine Rakestraw, R-a-k-e-s-t-r-a-w; Grace Sellers, S-e-l-l-e-r-s; Caroline C. Silva, S-i-l-v-a; Helen B. Simpson, S-i-m-p-s-o-n; Ann M. Sunseri, S-u-n-s-e-r-i; Angel G. Sanchez, S-a-n-c-h-e-z; Flora Bobo, B-o-b-o; Myrtle Nice, N-i-c-e; Mary E. Cahalan, C-a-h-a-l-a-n; Anna M. Krieg, K-r-i-e-g; Dianne

(Testimony of Nellie Putney.)

Minahan, M-i-n-a-h-a-n; Martha Reid, R-e-i-d; Wanda Wood, W-o-o-d; Lois [125] Reyman, R-e-y-m-a-n; Delta Server, S-e-r-v-e-r; Celia Myers, M-y-e-r-s; and Grace Laswell, L-a-s-w-e-l-l.

Mr. McTernan has called to my attention a name that I omitted—I am just checking now—apparently it was read.

Mr. Examiner, I would like to propose a stipulation to the effect that the names that I have just read reflect the employees of the Grant store who are in the appropriate unit and who were employed in the Grant store for the week including January 25, 1950.

Trial Examiner Spencer: So stipuated?

Mr. Foley: We so stipulate. [126]

* * *

November 14, 1950

MARTHA NIX

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

* * *

Q. Now, during the period of your employment at the Grant store, have you ever had occasion to wear a union button? A. Yes, we did.

Q. And, specifically, did you, yourself, wear such a button? A. Yes.

(Testimony of Martha Nix.)

Q. And for about how long?

A. For about two months.

Q. Was there ever any remarks addressed to you concerning this button by any of the management of the store? A. Yes.

Q. And by whom? A. Mrs. Kleidon.

Q. Is she the Assistant Manager? A. Yes.

Q. And when was such a remark made?

A. Well, it was about—between the 10th and 15th of April.

Q. And what do you recall was the remark?

A. Well, she asked me why I was still wearing my union button.

Q. And did you make any reply?

A. I said I don't know, because she said it in kind of a joking way.

Q. Is Mrs. Kleidon a fairly cordial person?

A. Yes.

Q. She is always, pleasant, good-humored, talkative? A. Yes, that's right.

Q. Would you say that is pretty uniform?

A. Yes.

Q. And did you make any response as to why you were wearing your button?

A. I just said something like "I don't know," something like that. I don't remember exactly the words I said.

Q. Can you remember now anything more of that conversation? A. No, that was all she said.

Q. All right. Now, after that did you continue to wear your union button?

(Testimony of Martha Nix.)

A. Well, I put it on the underneath side of my sweater.

Q. And prior to that where was it?

A. On the front. [132]

* * *

Cross-Examination

By Mr. Foley:

Q. You are very friendly with Mrs. Kleidon, are you, Miss Nix? A. Yes. [133]

* * *

Q. How long have you been friendly with her?

A. Since I started working at the store.

Q. You started working on April 18, 1949?

A. That's right.

Q. Did Mrs. Kleidon ever say to you that she would prefer you to take off the button?

A. No, she never said anything like that to me. [134]

* * *

Q. (By Mr. Foley): Did I understand, Miss Nix, that you said that it is merely your recollection that the button was not on the sweater when Mrs. Kleidon returned it, was that right?

A. Yes.

* * *

Q. Would you say that you don't know definitely whether the button was or was not on the sweater when Mrs. Kleidon returned it?

A. That's right, I wouldn't say for sure whether it was or wasn't. [136]

* * *

FRANCIS J. KIHHS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kennedy:

Q. Your name is Frank Kihs?

A. Francis Joseph Kihs.

Q. And you are the Manager of the San Jose Grant store? A. Yes, sir.

Q. And you have had that position for the past year, at least? A. Yes, sir.

Q. And, I will show you General Counsel's Exhibit 55 for identification, and ask you if that is your signature on that letter? A. Yes.

* * *

Mr. Kennedy: I will offer in evidence General Counsel's 55 for identification. [138]

* * *

Trial Examiner Spencer: Received.

* * *

Q. (By Mr. Kennedy): Now, Mr. Kihs, do you recall, on General Counsel's 55 there is an indication that 23 individuals received merit increases; do you recall the dates those wage increases were effected?

A. Well, I can approximate: it was either in January, February or March.

Q. Would you say that they were all instituted at the same time? A. I believe they were.

Q. Now, with respect to the change of hours,

(Testimony of Francis J. Kihs.)

which is indicated on here that 13 girls were changed from a six-day 40-hour week to a five-day 40-hour week, can you tell us when that change occurred?

A. It was either—as I say, I will have to approximate again—it was either January, February or March. [139]

* * *

Q. At the time that these increases were made and change of hours were made, did you consult with the Union with respect to those changes, or any representative of the Union?

A. I do not believe so.

Q. And I am going to ask you, if you will, now, to check and to tell us the dates that these increases were made and the change of hours was effected, if you will, please?

You have checked your records, Mr. Kihs, and can you tell us now when the increases indicated on General Counsel's 55 were effected in your store?

A. February 23rd, the week ending February 23rd.

Q. And that would be the week starting February 16th, is that right? A. That's right.

Q. And the same would be true with respect to the change in the work week from a six-day to a five-day week, with respect to the girls, to the numbers indicated on General Counsel's 55?

A. So far as my records show, that's true.

Q. Now, Mr. Kihs, do you recall an occasion when you had a meeting when you announced that

(Testimony of Francis J. Kihs.)

there was going to be a change in the work week and that everyone would be on a five-day week?

A. Yes, sir. [140]

Q. And about how long before the changes were effected was that announcement made?

A. I would have to estimate again; I would say approximately two or three weeks.

* * *

Q. Before these changes were made, here, from a six-day to a five-day week, did you on occasion change a girl from working a six-day week to a five-day week?

A. Yes, sir; I can cite several cases that I have records of.

Q. You did that frequently? A. Yes, sir.

Q. And with respect to giving a girl a wage increase, before that, on occasion, did you give a girl an increase? A. Yes, sir. [141]

* * *

Cross-Examination

By Mr. Foley: [151]

* * *

Redirect Examination

By Mr. Kennedy: [155]

* * *

Trial Examiner Spencer: Well, now, limiting the scope of my question to the San Jose store, have you ever granted that many merit increases, or more, at any one time previous to February, 1950?

(Testimony of Francis J. Kihs.)

The Witness: Not to my knowledge.

Trial Examiner Spencer: Did you ever grant as many as a dozen at one time previous to February, 1950?

The Witness: It is possible that I did.

Trial Examiner Spencer: I don't wish to mislead you as to what I am trying to get at. I want to know if there is anything unusual in your having granted this number at this particular time.

The Witness: I would say it is very unusual, inasmuch as I have never had an experience where I have had such a number of girls get married—well, I mean, there wasn't a number of pregnancies, there was only one—I never had had so many cases all at one time in my experience with the Grant Company. I realize it was very unusual that a thing like that should happen all at once, in a bundle, as you might say. [159]

* * *

Trial Examiner Spencer: Now, what has been your practice in the San Jose store; have you normally announced merit increases, one at a time, or more than one at a time? What has been your normal practice over the entire time that you have been at the San Jose store?

The Witness: I would say generally they would be in a group.

Trial Examiner Spencer: Well, can you be a little more specific? Do you have a recollection, in other words, on a group that you gave out any time prior to February, 1950?

(Testimony of Francis J. Kihs.)

The Witness: No, sir.

Trial Examiner Spencer: Now, you changed 13—I am still referring to General Counsel's No. 55—from which I see that 13 girls had their 40-hour week changed from six days to five days on about that same date. I would gather from previous testimony I heard here that some girls were already working on a five-day week?

The Witness: Yes, sir.

Trial Examiner Spencer: Prior to this time?

The Witness: Yes, several girls had requested six-day weeks.

Trial Examiner Spencer: You, I presume, did not change a girl from a six-day to a five-day week unless she was agreeable [160] to the idea, did you?

The Witness: No, sir.

Trial Examiner Spencer: And I suppose the other would be true; you didn't change her from a five to a six unless she was agreeable to the idea?

The Witness: Yes, sir. I wish I could mention at this time that it was our practice, upon employing girls—now, it could have been overlooked in certain cases—a girl was put on a six-day week at the time of her employment, but she was informed that any time she felt after—I don't think we set a specific date, such as the month—but we did tell the girls that after a certain period if they wanted to go on a five-day week, all they had to do was say yes and we would put them on a five-day week.

Trial Examiner Spencer: Is that your uniform

(Testimony of Francis J. Kihs.)

policy, that after a period you would put any of the girls on a five-day week upon their request?

The Witness: Yes, sir.

Trial Examiner Spencer: Do you have any particular explanation—there may be none required—as to why you made this effective as to 13 girls at one time?

The Witness: No, sir.

Trial Examiner Spencer: Do you recall whether or not these particular 13 girls had all requested the five-day week at about this time? [161]

The Witness: No, sir. I can remember one girl distinctly having requested it, but I couldn't remember any more than that one.

* * *

Recross-Examination

By Mr. Foley: [162]

* * *

Q. Will you read into the record the names of the people that were on a five-day week prior to January 1, 1950?

A. Yes, sir.

Mr. Kennedy: I want to interpose an objection. I have no serious objection to the contents going in, except that the relevance of the identity doesn't seem to be very strong, and [163] that as of the time, there were a great many people, or the number reflected in General Counsel's Exhibit, that were already on a five-day week that weren't switched to it.

Mr. Foley: If you will concede that, that's

(Testimony of Francis J. Kihs.)

enough, that the majority were already on a five-day week.

Mr. Kennedy: Yes, the majority.

Mr. Foley: All right, that will be enough.

Trial Examiner Spencer: A majority of all employees of the Grant store on a five-day week prior to January, 1950, is that what you are granting, Mr. Kennedy? [164]

* * *

Q. (By Mr. Foley): Now, on or about February 13th, when you announced a five-day week, did that five-day week apply to everyone, including Mrs. Burnell?

A. As I recall, I spoke to Mrs. Burnell and asked if she would like to go on a five-day week, previous to this announcement, and she said she would, and so it did include Mrs. Burnell at that time.

Q. It applied to all female employees?

A. All female employees.

Q. Did it apply to Robert Ellington, the stock man? A. No, sir.

Q. Did it apply to Tony I-n-t-r-a-v-i-a, Intravia—what is his job?

A. Robert Ellington at that time was the porter; Tony Intravia was the stock man.

Q. Did it apply to either of those people?

A. No, sir. [166]

Q. They were kept on a six-day week?

A. Yes, sir.

Mr. Foley: That's all.

Trial Examiner Spencer: Mr. Foley, just so I

(Testimony of Francis J. Kihs.)

understand it, is the point that after the 13 had been placed on a five-day week all of the female employees were then on a five-day week, is that it?

Mr. Foley: Yes, sir.

Mr. Kennedy: That's all the sales people, Mr. Kihs.

The Witness: All female employees excluding supervisors were placed on a five-day week.

Mr. Kennedy: Including the sales girls and office force.

Mr. Foley: All employees except Mrs. [167] Kleidon.

* * *

Mr. Kennedy: Mr. Foley, in lieu of my calling you, perhaps you would like to stipulate that with respect to the promotions, wage increases, and change of working hours in February, 1950, you were not consulted by any representatives of the Retail Clerks Union?

Mr. Foley: No, sir; we were not consulted.

Mr. Kennedy: And that they were instituted without consulting the representatives of said union?

Mr. Foley: Yes, sir; we so stipulate. [176]

* * *

Mr. Kennedy: On further consideration at the moment, I am convinced that probably my procedure leaves something to be desired with respect to—my contemplated effect of making the [178] motion to conform the pleadings to the proof, and with the consent of the Trial Examiner, I should like to make a motion at this time in lieu of such

(Testimony of Francis J. Kihs.)

a motion which I stated I contemplated, to amend paragraph five to include in addition to the material included therein, "and also threatened to close their store and cease operations in San Jose, California, if, or before a union shop would be tolerated by the Respondent." [179]

* * *

Trial Examiner Spencer: Well, I think the amendment should be accepted and that was the amendment to sub-five of paragraph seven of the Complaint, so I will grant the motion to so amend it. [180]

* * *

OMERA GUILLORY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Foley:

* * *

Q. How many days a week do you work?

A. I work five days a week.

Q. Who employed you?

A. Mrs. Kleidon.

Q. That was in February, 1948?

A. That's right.

Q. Did you have any conversation at that time with Mrs. Kleidon [181] as to the number of days you would work a week? A. Yes.

(Testimony of Omera Guillory.)

Q. Will you relate the conversation, please?

A. She asked me if I'd like six days a week or five days, and I told her at the time I was employed I was just recently out of the hospital and I would prefer working six days a week, which would be six hours and forty minutes a day, I think, and she said any time that I wanted a five-day week come in and tell her; and when I decided I was able to take a five-day week I went and told her and she gave it to me.

Q. And now, subsequent to that, did you have any conversation with Mrs. Kleidon about the length of your—the number of days you would work a week? A. No, not exactly.

Q. Well, at any time thereafter did you change to a five-day week?

A. Yes, I did. After that I went on a five-day week.

Q. About when?

A. Oh, let's see—I'd say after I was working about four or five months, something about that period, when I went to her and told her I thought I could take a five-day week.

Q. That was during the year 1948, then?

A. Yes.

Q. Did you sign a card, a union card, here?

A. Yes, I did. [182]

Q. Did you ever go to any union meetings?

A. No, I didn't.

Q. Do you know Mr. Lazzaro, the gentleman sitting at the end of the table?

(Testimony of Omera Guillory.)

A. Yes, I do.

Q. During the month of January, 1950, after you signed this union card, did you have a conversation with Mrs. Milissa Cook?

A. Yes, I did.

Q. Will you kindly relate——

Mr. McTernan: May we have a foundation on that, Mr. Examiner, of who Mrs. Cook is?

Trial Examiner Spencer: Who Mrs. Cook is, etc.

Mr. McTernan: Where the conversation was held, who was present.

The Witness: The conversation was held in front of the store, and at that time there was no one present except she and I; I happened to be on a lunch hour and she was talking to me.

Q. (By Mr. Foley): About the union?

A. Yes, about the union.

Trial Examiner Spencer: Who is Mrs. Cook?

The Witness: An employee of Grant's.

Mr. Kennedy: I now want to register my objection to the conversation between this witness and Mrs. Cook as not having any evidentiary value as to proving the truth of what such conversation might be. [183]

Trial Examiner Spencer: What is the——

Mr. Foley: I want to show the coercion.

Trial Examiner Spencer: These are two employees talking between themselves?

Mr. Foley: Yes, sir.

Trial Examiner Spencer: Well, I will take it,

(Testimony of Omera Guillory.)

and then if it seems improper, I will hear a motion to strike it.

Q. (By Mr. Foley): Will you relate the conversation, Mrs. Guillory?

A. Well, she had said to me when I was walking down to the floor, she said, "Did you hear what was said?"

And I said, "No, not exactly; what was said?"

And she said, "Well, it was brought to my attention that somebody suggested that I have your husband beat up if you don't join the union and go to all the union meetings." [184]

* * *

Q. (By Mrs. Foley): And subsequent to this conversation with Mrs. Cook, did Mr. Lazzaro visit your home? A. Yes, he did.

Q. Did you have a conversation with him?

A. Yes, I did. [185]

* * *

Q. (By Mr. Foley): What was the conversation you had with Mr. Lazzaro?

A. Well, he come up to the house and he asked if he could come in and talk. I said yes and invited him in. It was in the afternoon. He sat down in my kitchen—I have only a two-room apartment—he sat in my kitchen and said it had been brought to his attention that threats—that some of the girls had said they were going to threaten me by my husband being beat up with some of the carpenters if I didn't join the union, and he'd come down to

(Testimony of Omera Guillory.)

tell me they didn't go in for hoodlumism, and stuff like that.

* * *

Q. (By Mr. Foley): Now, did you subsequently see Mr. Lazzaro in the W. T. Grant Company store? A. Yes, I did.

Q. How much time elapsed between his visit to your home and when you saw him again at the Grant Company store, about?

A. Well, not too long. [186]

Q. A matter of weeks?

A. I think a matter of weeks—not months.

Q. About how many weeks?

A. I'd say about three or four, maybe.

Q. And what did you observe him doing, if anything, in the W. T. Grant Company store?

A. One thing I particularly noticed was the roughing up of Department 11, which is men's and boys' clothes.

* * *

Cross-Examination

By Mr. Kennedy: [187]

* * *

Q. And do you know whether or not when you saw Mr. Lazzaro as you call "roughing up Department 11" whether or not he was looking for purchases or articles on the counter?

A. Well, we asked if he would like to be waited on and he said no.

Q. Did you ask him?

(Testimony of Omera Guillory.)

A. Yes, I did. My department is right next to that one, was at that time.

Q. Did Mr. Lazzaro hand you a card?

A. Yes, he did.

Q. What did you do with it?

A. Tore it up, and I laid it on the counter.

Q. Did you see what happened to it then?

A. No, I did not see what happened to it. [188]

* * *

ELEANOR ROSE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

By Mr. Foley:

* * *

Q. Do you remember Mr. Lazzaro visiting the W. T. Grant Company store? A. Yes, I do.

Q. About when?

A. I don't exactly remember.

Q. Have you seen him more than once?

A. Yes, I saw him twice. [189]

Q. I see. Now, on a certain occasion—the occasion I have in mind, you were cutting window shades, were you? A. Yes.

Q. When he visited the store; and will you tell us what, if anything, you observed Mr. Lazzaro doing on that occasion?

A. Well, I was waiting on a customer, cutting window shades, and he come up to me and wanted to give me a card, which I assumed was a union

(Testimony of Eleanor Rose.)

card, to sign and I was waiting on my customer, tending to that, and I didn't pay any attention to him. And when I turned around, he was proceeding to go around my counter, which was between 35 and 40 feet of counter, and just turning my merchandise over, my curtains and things; and when I got through, he was gone already, but the curtains were turned over and had to be all straightened up.

Mr. McTernan: May I move to strike that part of the answer that says Mr. Lazzaro wanted to give her a card which she assumed was a union card, to sign, those words beginning with "wanted to give her a card, which she assumed was a union card, to sign."

Trial Examiner Spencer: I can strike the assumption, if that is what you refer to. All right, the assumption may be stricken.

Q. (By Mr. Foley): Did what Mr. Lazzaro did require you to do any work that day?

A. Yes, it did; it took me at least 20 minutes to a half hour [190] to straighten it up.

Q. Had you ever signed a union card?

A. No, I didn't.

Q. Before that; have you ever signed one since?

A. No, sir; I was never approached by anyone to sign one inside the store or out, other than that one day. [191]

* * *

PEARL NICHOLSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Foley:

* * *

Q. When were you employed by W. T. Grant Company?

A. I believe it was the latter part of June, 1948.

Q. What was your work week, in the number of days that you worked per week, then?

A. When I first started I was on a six-day week. I was living in town at that time, and in September of '48 we bought our home in Los Gatos and I have to come to work with my husband because [196] I don't have any other way of commuting, so Mrs. Kleidon talked to me and she said that she thought that being that I lived out so far, would I prefer to be on a five-day week which would be much better, because I wouldn't have to wait till ten to ten to go to work. So she put me on the five-day week.

Q. Do you know Mr. Lazzaro, the gentleman leaning over Mr. McLoughlin's shoulder now?

A. Yes, I do.

Q. Did you ever see him in the Grant store?

A. Yes, sir.

Q. How many times?

A. Oh, offhand I couldn't say; I've seen him several times.

(Testimony of Pearl Nicholson.)

Q. In the Grant store?

A. I think a couple of times in the Grant store, the other times in the front of the store.

Q. How many times did you see him in the store—more than once? A. I believe so.

Q. Now, did you ever see him in the yard goods counter? A. Yes, sir.

Q. Will you tell us what you observed, if anything, at the yard goods counter?

A. Well, on this particular day I was waiting on a customer and Mr. Lazzaro approached me and tried to hand me a card; I presumed it was about a meeting—I could be mistaken. Mr. Kihs [197] and Mr. Burton were near him, I believe, at the time; I couldn't say definitely the conversation that went on between Mr. Kihs and Mr. Burton, because I was busy at the time waiting on my customer. I believe Mr. Kihs asked Mr. Lazzaro not to bother the girls while they were busy working, and he tried again to hand me the card, but I didn't pay any attention, I kept on measuring material for the lady I was waiting on. And Mr. Kihs, Mr. Lazzaro and Mr. Burton were all talking, and I didn't pay any attention to the conversation, because at the time I was busy, and after a short conversation, Mr. Kihs and Mr. Lazzaro had, Mr. Lazzaro went around to the yardage and was picking up pieces of material and stringing it out over the counter, and then he asked me for a yardstick. Well, I had finished with my customer and I approached Mr. Lazzaro to see if maybe I could help him; maybe,

(Testimony of Pearl Nicholson.)

perhaps he wanted something. So he asked me for a yardstick and I gave it to him, and he said to me, "Well, how wide is this material?"

I said, "36 inches."

And then he started to walk around the counters and I went behind him and straightened up the materials to the best of my ability and proceeded to help other customers that had come up during that time.

Q. Did you see him at Miss Rose's department that day? A. Yes, sir.

Q. What did you observe there? [198]

A. Well, I noticed he was fooling with the curtains. [199]

* * *

FRANCIS J. KIHS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [200]

Direct Examination

By Mr. Foley:

Q. When did you first meet Mr. Lazzaro?

A. I believe it was January 5, 1950, when he came into the store and told me that he represented a union, and that they had organized a majority of our employees.

Q. Now, on the 6th, I think there is evidence that you received a letter from the Union?

A. Yes, on the 6th I received a letter from the

(Testimony of Francis J. Kihs.)

Union and I also received a telephone call from a man that said his name was Mr. McLoughlin and he was an official of the Union. He asked me if I had taken any action on the letter; I instructed him that I had forwarded it to Mr. Foley of our legal department, but I recommended that he petition the Board for—the National Labor Relations Board for an election.

Q. Did you have any subsequent conversation with Mr. McLoughlin?

A. I'd say approximately, oh, a week or two later, Mr. McLoughlin called me and asked me who Mr. Foley was, and I told him to the best of my knowledge he was the head of our legal department. At that time I didn't understand that you were the head of the labor relations department; I understood that you were the head of the legal department—and that I'd suggest he contact you in regard to anything, but I did state that he should petition the National Labor Relations Board for an election; and at that time Mr. McLoughlin stated, "Well, we had better wait until Mr. Foley comes out, and we will discuss it," or words to that [201] effect. I am not sure if that is his exact answer.

* * *

Q. Did you attend the conference of January 25 at the Sainte Claire Hotel?

A. Yes, sir. [202]

Q. And was there a discussion between Mr. McLoughlin, Mr. Lazzaro, you, and myself with reference to the Union's claim of representation?

(Testimony of Francis J. Kihs.)

A. Yes, sir. As I recall, at that time you stated the company policies, which were that the company felt that any employee of the Grant Company could join a union or refrain from joining a union, or, if after having joined a union, he could resign as he saw fit, without any obstruction from the management.

Q. Did you hear me say anything at all about a willingness to consent to an election?

A. No, sir; you definitely stated—the only thing I recall your stating was that they should petition the National Labor Relations Board for an election.

Q. Do you remember any conversation with reference to a union shop, or was that the conversation?

A. That was the conversation I just related.

Q. What did Mr. McLoughlin say to that?

A. As I recall, Mr. McLoughlin said, “We just can’t go for that.” He may have said something else, but I can’t recall it. [203]

* * *

Q. (By Mr. Foley): Now, early in the month of February, 1950, did you hear any rumors at all with reference to the possibility of the store’s becoming a union shop?

* * *

The Witness: Yes, I did hear rumors to the effect that if the store was organized it would definitely be a union shop, and at that time, or a little while later, I did post a notice to the effect

(Testimony of Francis J. Kihs.)

that our store would always allow the employees to join unions, or not join unions, as they saw fit, and if they wanted to join the union, they could join without prejudice by the management.

Q. Now, in April, and more specifically, after a union meeting held on April 24th, did you hear any comment in the store about [205] that notice?

A. Yes, sir.

Q. From whom?

A. From Mrs. Guillory.

Q. And what did she tell you?

* * *

The Witness: I received notice that in spite of what I had said, in spite of the notice that I had posted on the bulletin board, that if the union won the election that we would have the union shop; and at that time I wrote to Mr. Foley, and his reply was that particular letter—that is posted, I believe, in evidence.

Trial Examiner Spencer: Yes, it has been received in evidence. You may want to get the exhibit number of that letter in order to make the reference clear. [206]

Mr. Foley: The letter is 58.

Trial Examiner Spencer: General Counsel's Exhibit No. 58.

Showing you General Counsel's Exhibit No. 58, is that the letter you had reference to in your testimony?

The Witness: Yes, sir. [207]

* * *

(Testimony of Francis J. Kihs.)

Redirect Examination

* * *

RESPONDENT'S EXHIBIT No. R-1

4/25/50

Dear Mr. Foley:

As I mentioned in my letter of 4/24 the Union called a meeting of the evening of 4/24.

I have received the following information regarding the meeting:

Five of my people attended.

They were told that in spite of any statement I had made that if the Union gets in this store will be a Union shop and not an open shop.

They also stated that in order to have the Union in the store they would only need seven votes in favor.

They also stated that if they lost this store they would be licked in San Jose and would have to leave town.

The above covers pretty much what took place in the meeting. Of course my information is second-hand so I am just quoting another person's word.

I just recalled another thing. They were told that the election would take place in the near future, so the Union planned to call one more meeting.

(Testimony of Francis J. Kihs.)

Is there any action I should take to combat the above statement?

Yours,

/s/ FRED KIHHS,

331.

Received in evidence Nov. 14, 1950.

Mr. McTernan: May we have the manual or the pages marked for identification that the witness is testifying from? [223]

* * *

Mr. Foley: I will offer it in evidence.

* * *

Trial Examiner Spencer: All the objections previously stated will go to the receipt of this in evidence; I understand that. I am going to receive it in evidence.

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.) [224]

* * *

RESPONDENT'S EXHIBIT No. R-2

The Grant Store Manual

Dated: Jun. 21, 1950. Chapter 7

—7—

Sometimes customers ask to be served by union salesperson and even go so far as to ask salesperson to identify herself as a union member by signing sales slip. Standard practice does not permit sign-

(Testimony of Francis J. Kihs.)

ing of sales slips or any other paper for customers. If salesperson wishes, she may answer customer's question as to whether or not she is a member of labor organization but she may Not refer to other salesperson as either union or non-union. No salesperson may intercede in any transaction between a customer and another salesperson if customer's sole objection to latter's service is based on union or non-union status of such a salesperson. Such a practice would cause humiliation and discord among store employes and therefore is not permitted. It is obligation of each employe to devote his time to Company business during working hours. This obligation is not fulfilled when salespeople join customers in any activity which is not related to Company business. Hence organizational activities and soliciting of members is not to be permitted, but if Manager has been lax in enforcing foregoing requirements, he cannot consistently prohibit organizational activities without being subject to charge of being opposed only to those discussions which relate to unionization.

d. Relations With Individual Employes

Manager is not to be curious or in any way interested as to whether an employe does or does not belong to union, or the extent of an employe's union activities. No one is to be favored because of membership or non-membership in any union.

If an employe asks advice as to whether she should or should not join a union Manager may state:

(Testimony of Francis J. Kihs.)

“That is a matter for you to decide for yourself. Naturally I don’t know what the union expects to accomplish but any attempt to get you to join should bring to your mind such questions as:

“Since the Grant Company’s policy is to pay at least as much as competitors, how can this union help me?

“Why have these total strangers suddenly become interested in me? Are they interested in my personal individual welfare or have they a selfish motive? Is it better for me to deal with the Store Manager when I have something on my mind, or it is better for me to have this union speak for me? Do I know enough about them to warrant placing my future in their hands? (You know, of course, that if you decide to have a third party represent you, you will have to pay for such representation.)

“Personally, I feel that the Company has been a leader in improving employment conditions, with its vacation policy, retirement plan, group insurance, employes’ discount, Christmas bonus, and so forth. I know that the Company will continue to try to make Grant’s the best place to work whether you do or do not join a union.”

An employe’s union membership does not change his relationship to the Company. If his membership is regarded by management in a frowning

(Testimony of Francis J. Kihs.)

manner his feeling of good will toward the Company is apt to be imperiled.

—8—

The fact that employes organize for collective bargaining does not restrict their privilege of presenting individual grievances to management. Freedom of expression by employes is to be encouraged. Frank and constructive criticisms of policies or methods are invited and should in no case reflect to disadvantage of person who offers them. Every complaint is to be given careful consideration and corrective action taken when complaint is justified. When not justifiable, reason is to be patiently explained to employe.

When Manager had ample opportunity to observe employes performance and has overlooked poor performance, a discharge for inefficiency during or after organizational activity will be looked upon with suspicion. It will seem that reason assigned for dismissal had not been regarded, prior to unionizing, as sufficient grounds to warrant dismissal. The longer one is employed, the more unfair a discharge for inefficiency appears, for long service of itself casts doubt on Manager's motive in dismissing employe, during organizational activity or, if the employe was actively engaged in the unionization campaign, after the campaign is over.

When employe is to be reprimanded or criticized, it is not to be done publicly. Disciplinary action is to be prompt and equal in similar cases. Unless

Trial Examiner Spencer: What is your purpose, what do you offer them for?

Mr. Foley: My purpose is to show that the Respondent filed a brief in the representation proceeding on March 24, 1950, [228] and that on March 29, 1950, the Board received an application from the Petitioning Union to file an answering brief. My purpose is to show that on that date there was no great haste on the part of the Union, for the Union itself was asking for additional time, when the election could have been expedited upon its waiving any theories it might have about the unit which had been agreed upon at the representation hearing.

Trial Examiner Spencer: Those three papers have to do with this particular matter?

Mr. Foley: Yes, sir.

Trial Examiner Spencer: Well, I think I understand the objection to it; we have quite a few papers bearing on the representation proceeding which may or may not have weight; I see no reason for not receiving these. They are received.

(The documents heretofore marked Respondent's Exhibits 3, 4, and 5 for identification were received in evidence.) [229]

* * *

(Testimony of Francis J. Kihs.)

RESPONDENT'S EXHIBIT No. R-3

National Labor Relations Board
Washington, D. C.

Form NLRB—1419

Date: March 24, 1950.

In re: 20-RC-780

W. T. Grant Company

Gentlemen:

This is to acknowledge receipt of your brief on behalf of the Company filed with the Board in the above-entitled matter, which has been referred to the Board for consideration. Please forward us one additional copy of your brief.

Very truly yours,

/s/ LOUIS R. BECKER,

Associate Executive Secretary.

Sent 3/30/50.

Received in evidence Nov. 14, 1950.

RESPONDENT'S EXHIBIT No. R-4

National Labor Relations Board
Washington, D. C.

Form NLRB-1419

Date: March 31, 1950.

In re: 20-RC-780

W. T. Grant Company

Gentlemen:

This is to acknowledge receipt of your one additional copy of your brief on behalf of the Company, filed with the Board in the above-entitled

(Testimony of Francis J. Kihs.)

matter, which has been referred to the Board for consideration.

Very truly yours,

/s/ LOUIS R. BECKER,

Associate Executive Secretary.

Received in evidence Nov. 14, 1950.

RESPONDENT'S EXHIBIT No. R-5

Confirmation Copy

"This is a Confirmation Copy of a Message Telephoned to Miss A. Dlag on 3-29 at 1151a."

General Services Administration, Public Buildings Service Watkins 4-3449, Message Telephoned by Del Gardio.

Book NY

147 NY WA W T Grant Company Att Eugene M
Foley 1441 Broadway NY

V/49 WA WAL /NLRB/

Washington 3-29-50 1110A

Re W. T. Grant Company, 20-RC-780, Petitioner's Request for Extension to File Briefs Denied.

NATIONAL LABOR

RELATIONS BOARD.

20-RC-780

TR 111A /JD 1130A/

Received in evidence Nov. 14, 1950.

Mr. Foley: Mr. Burton, will you take the stand, please?

RODERICK BURTON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Foley:

* * *

Q. Do you know Mr. Lazzaro? A. I do.

Q. Did you ever see him in the W. T. Grant Company store? A. Yes, I have.

Q. How many times?

A. Oh, quite a few times.

Q. About how many?

A. Three times, that I recall.

Q. Did you ever see him at the curtain [230] counter? A. I have.

* * *

Q. (By Mr. Foley): Will you please state what you saw on that occasion?

A. Well, I see Mr. Lazarro come and just upheave the whole counter, take the merchandise and——

Q. What counter? A. Curtain counter.

Q. Yes. A. Besides other counters.

Q. What other counters?

A. The yard goods counter.

Q. What did you observe as to the yard goods counter? [231]

A. Besides tearing the merchandise apart and just stringing it all out, all over the place, he tried to——

(Testimony of Roderick Burton.)

Q. Did you see that?

A. I certainly did.

Q. Don't assume that we know what you saw—tell us what you saw.

A. He just went right along and pulled everything out, took the stuff from the bottom and pulled it up to the top, so that everything would fall over the place.

Q. Did you talk to him about it?

A. I told him that it wasn't very good practice to do something like that.

Q. What did he say to you, if anything?

A. Well, he said, "I'm looking, I'm looking."

Q. Did you hear him speak to any customers?

A. He certainly did.

* * *

The Witness: He said, "Lady, don't patronize this store; they're unfair." [232]

* * *

EUGENE M. FOLEY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [233]

Direct Examination

* * *

By Mr. Hofvendahl:

Q. Did you have a meeting in San Jose, California, on January 25, 1950? A. I did.

(Testimony of Eugene M. Foley.)

Q. Where did that meeting take place?

A. At the Sainte Claire Hotel.

Q. Who was present at the meeting?

A. Mr. Kihs, Mr. Lazzaro, Mr. McLoughlin, myself.

Q. What was the purpose of the meeting, Mr. Foley?

A. Well, in short, to break ice. Mr. McLoughlin—I had heard from the store that Mr. McLoughlin or Mr. Lazzaro, or both, had made a claim of representation of the people in the San Jose store, which is standard company procedure when a claim of [234] representation is made, the claim is transmitted to the company's personnel department which in turn sends it to me. At that time I had negotiations pending elsewhere and communications passed between Mr. McLoughlin and myself and as a result of those communications we met on the 25th of January, and, as I say, it was an ice-breaking session. The claim was made—naturally, I wanted to put my best foot forward—I told them how good we were in not influencing the people one way or the other. We talked about, and I did this in order that there would be no misunderstanding later, I told them I had firm convictions against a union shop. I might say parenthetically that I knew the union shop existed in the Kress store because they inquired before I left New York who had the contract with this Union—and I might say I re-

(Testimony of Eugene M. Foley.)

ceived the contract with the Kress Company before I left New York.

So that, to understand one another from the outset, I said, "We don't look favorably at all on union shops," and I said particularly there was a union shop clause in the Kress agreement.

We talked about an election. I said, "I have the invariable practice of referring claims of representation to the Labor Board." Mr. McLoughlin, particularly, told me about some experiences he had with the Board, matters of delay; he wasn't very affectionate toward the personnel either, of the Board, and suggested that the matter of representation be settled by some State agency and I, being somewhat ignorant of procedure here, was opposed to [235] sidestepping the Board, an agency set up by the Government for the very purpose of determining whether a union represented the employees or not of the store.

* * *

Trial Examiner Spencer: Have you finished, Mr. Foley, on this meeting?

The Witness: Well, no; I heard Mr. McLoughlin say, during the course of the meeting, the words "consent election," and his mind, or mine, leaped to some other subject, and that was the last I heard of consent election. I never said, yes, no, nor did I mention those words at all at this meeting of January 25th. [236]

Q. (By Mr. Hofvendahl): I take it from your previous testimony, Mr. Foley, you did not refuse

(Testimony of Eugene M. Foley.)

to discuss the question of representation with Mr. McLoughlin and Mr. Lazzaro?

A. Oh, no—refused to discuss it? Oh, no, we had a very cordial meeting. We had a nice talk and we talked about a union shop, as a matter of fact. I told them that I had listened to arguments in twenty or more negotiations on the union shop, and I never heard a good argument for it yet. But after it was all over—in fact, the only belligerent word uttered by Mr. McLoughlin was, “Well, we’ll never go for that.”

Mr. McTernan: Object, as a conclusion of the witness that it was belligerent.

Trial Examiner Spencer: All right, we will strike the word “belligerent.”

Q. (By Mr. Hofvendahl): Did you state, on the occasion of this meeting, Mr. Foley, that you would ever refuse to discuss the question of representation with the Union?

A. Well, we were discussing representation; in connection with the representation, I said that I would like to have them go to the Board and have the Board settle the question of representation. All that I was interested in was laying the ground work [237] for a bargaining if they did find that they represented a majority of the employees.

Q. Then did you return to this area after January 25, 1950, on May 3, 1950?

A. Yes, and as a matter of fact, I returned to this area before that; I returned on March 3rd in connection with the representation proceeding in San Francisco, and after that representation hear-

(Testimony of Eugene M. Foley.)

ing, well, we ironed out certain little wrinkles in connection with the unit, and the Board ordered an election, directed an election to be held within 30 days after April 4th. [238]

* * *

Q. (By Mr. Hofvendahl): What was your purpose in coming to this community on May 2nd, 1950, then?

A. Well, I wanted to be here if the Union was chosen as the bargaining agent, I wanted to be here to bargain.

* * *

Cross-Examination

By Mr. Kennedy: [239]

* * *

Q. Now, in the copy of the Kress contract that you secured, Mr. Foley, it is true, is it not, that included [241] in that copy of the contract there were wage rates? A. Yes, sir.

Q. And you know, as a matter of fact, that the wage increases that were granted in February brought the Grant employees to substantially the same level as the Kress employees with respect to wage rates? A. No, I don't know. [242]

* * *

Trial Examiner Spencer: Now, Mr. Kennedy, you are not contending that in order to show good faith an employer is required to enter into a consent election, are you?

Mr. Kennedy: I am contending that if there are no——

Trial Examiner Spencer: If he is intended to, that is not a consent election; that would simply be a contradiction of [260] terms. [261]

* * *

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. T. GRANT COMPANY,
Respondent.

CERTIFICATE OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, “In the Matter of W. T. Grant Company and Retail Clerks Union, Local 428, the same being known as Case No. 20-CA-378 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating William E. Spencer Trial Examiner for the National Labor Relations Board dated October 18, 1950.

2. Stenographic transcript of testimony taken before Trial Examiner William E. Spencer on November 13 and 14, 1950, inclusive, together with all exhibits introduced in evidence.

3. Copy of Trial Examiner William E. Spencer's Intermediate Report dated November 30, 1950 (annexed to item 9 hereof; order transferring case to the Board dated November 30, 1950, together with affidavit of service and United States Post Office return receipts thereof.

4. Respondent's Motion For Order Correcting Transcript of Testimony dated December 4, 1950. (Granted, see Board's Decision and Order dated June 7, 1951, page 1 footnote 2.)

5. Respondent's letter dated December 5, 1950, requesting permission to argue orally before the Board. (Denied, see Board's Decision and Order dated June 7, 1951, page 1 footnote 2.)

6. Respondent's letter dated December 7, 1950, requesting extension of time to file exceptions and briefs.

7. Copy of Board's telegram dated December 8, 1950, granting all parties extension of time to file exceptions and briefs.

8. Respondent's Exceptions to Intermediate Report received January 5, 1951.

9. Copy of Decision and Order issued by the National Labor Relations Board on June 7, 1951, with Intermediate Report annexed, together with

affidavit of service and United States Post Office return receipts thereof.

10. Respondent's Motion to Reconsider Board's Decision and Order dated June 21, 1951.

11. Union's telegram, dated June 26, 1951, in opposition to Respondent's Motion for Reconsideration.

12. Board's Order Denying Motion to Reconsider Decision and Order dated July 11, 1951, together with affidavit of service and Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9 day of October, 1951.

/s/ FRANK M. KLEILER,

Executive Secretary,

[Seal]

NATIONAL LABOR

RELATIONS BOARD.

[Endorsed]: No. 13133. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. W. T. Grant Company, a Corporation, Respondent. Transcript of Record. Petition for Enforcement of An Order of the National Labor Relations Board.

Filed October 15, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

DESIGNATION OF THE NATIONAL LABOR
RELATIONS BOARD OF THOSE PARTS
OF THE RECORD WHICH THE BOARD
DESIRES TO HAVE PRINTED

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, the petitioner herein, and, in conformity with Rule 19 (6) of this Court, designates the following portions of the record to be printed in support of the Board's petition:

1. The Charge, dated May 2, 1950 (General Counsel Exh. 1).

2. The First Amended Charge, dated August 9, 1950 (General Counsel Exh. 5).

3. The Complaint (General Counsel Exh. 6).

4. The Answer (General Counsel Exh. 9).

5. The following pages from the stenographic transcript of the hearing before the Trial Examiner:

* * *

6. The following General Counsel Exhibits: 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 47, 50, 51, 52, (Title page and page 25, lines 16-23), 53, 56, 58.

7. Respondent Exhibit 2.

8. Exceptions of Respondent to Intermediate Report.

9. Board's Decision and Order, together with Intermediate Report of the Trial Examiner attached thereto.

10. Respondent's Motion for Reconsideration, dated June 21, 1951.

11. Order denying Motion for Reconsideration.

12. The petition for enforcement and any response filed thereto.

13. Certificate of Contents of Record.

14. This Designation of Record.

Dated at Washington, D. C., this 9 day of October, 1951.

/s/ A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed Oct. 15, 1951.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant

to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, W. T. Grant Company, San Jose, California, its officers, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of W. T. Grant Company and Retail Clerks Union, Local 428, A.F.L., Case No. 20-CA-378."

In support of this petition the Board respectfully shows:

(1) The Respondent is a Delaware Corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on June 7, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents, successors, and assigns.

The aforesaid order provides as follows:

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor

Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent W. T. Grant Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all employees at its San Jose, California, store, excluding supervisors, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) Conferring benefits on its employees for the purpose of inducing them to refrain from union affiliation and activities; questioning its employees concerning their union activities; threatening to close its San Jose store rather than accede to a union shop; or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks Union, Local 428, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a

condition of employment, as authorized in Section 8 (a) (3) the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all the aforesaid employees with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its San Jose, California, store, copies of the notice attached hereto, marked Appendix A.¹⁰ Copies of the said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to in-

¹⁰In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words: "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."

sure that such notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

(3) On June 7, 1951, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 9th day of October, 1951.

NATIONAL LABOR
RELATIONS BOARD,
By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Appendix A

Notice to All Employees
Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not confer benefits upon our employees for the purpose of inducing them to refrain from union affiliation and activities.

We Will Not question our employees concerning their union activities, or threaten to close our San Jose store rather than accede to a union shop.

We Will Not in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks Union, Local 428, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for

the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement which requires membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will Bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of our San Jose store, excluding supervisors, as defined by the Act.

All of our employees are free to become, remain or refrain from becoming or remaining members of Retail Clerks Union, Local 428, AFL, or any other labor organization, except to the extent that their right may be affected by a lawful agreement which requires membership as a condition of employment.

Dated

W. T. GRANT COMPANY,
(Employer)

By /s/
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed Oct. 15, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, the petitioner herein, and, in conformity with Rule 19 (6) of this Court, states that it intends to rely upon the following points in this proceeding:

1. Substantial evidence on the record considered as a whole supports the Board's findings that respondent violated Section 8 (a) (1) of the Act by unilaterally granting wage and hour benefits to its employees to discourage union affiliation, by interrogating its employees in respect of their union activities, and by threatening to close its San Jose store rather than accede to a union shop.

2. Substantial evidence on the record considered as a whole supports the Board's finding that respondent refused to bargain with the Union, in violation of Section 8 (a) (5) of the Act.

Dated at Washington, D. C., this 9th day of October, 1951.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

[Endorsed]: Filed Oct. 15, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

The President of the United States of America

To W. T. Grant Company, 146 South First Street,
San Jose, California, and Retail Clerks Union,
Local 428, AFL, Att.: Messrs. Victor Lazzaro
and James P. McLoughlin, 84 South First St.,
San Jose, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 15th day of October, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on June 7, 1951, in a proceeding known upon the records of the said Board as "In the Matter of W. T. Grant Company and Retail Clerks Union, Local 428, AFL, Case No. 20-CA-378," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief

Justice of the United States, this 15th day of October, in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Returns on Service attached.

[Endorsed]: Filed Oct. 22, 1951.

[Title of District Court and Cause.]

ANSWER TO THE PETITION OF THE
NATIONAL LABOR RELATIONS BOARD
FOR THE ENFORCEMENT OF ITS
ORDER

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now W. T. Grant Company, the respondent herein, and, answering the petition of the National Labor Relations Board:

1. Admits that it is a Delaware corporation, and further, that this Court has jurisdiction of the Board's petition, but it denies that any unfair labor practices were committed by the Respondent herein at any time or place.

2. Admits that the Board on June 7, 1951, duly stated its findings of fact and conclusions of law and issued an order directed to the Respondent, its

officers, agents, successors and assigns, but it alleges that such findings of fact are not supported by substantial evidence and that the Board's conclusions are contrary to law.

3. Admits due service of the Board's Decision and Order.

4. Denies knowledge or information as to the truth of any of the averments in the fourth paragraph of the Board's petition.

Wherefore, the Respondent prays this Honorable Court to set aside in its entirety the order of the National Labor Relations Board.

W. T. GRANT COMPANY,
By /s/ EUGENE M. FOLEY,
Attorney.

Dated at New York, N. Y., this 23rd day of October, 1951.

[Endorsed]: Filed Oct. 26, 1951.

